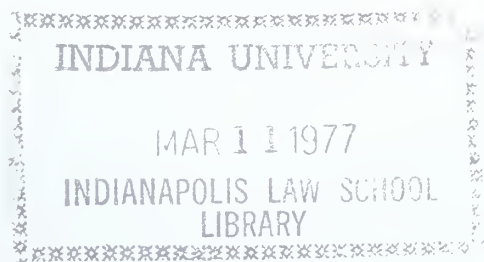


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Law & Legal Literature of Peru

A Revised Guide

By

David M. Valderrama

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Foreword

In the field of law, as in most fields, growth of knowledge depends to a great degree on an awareness of the availability and accessibility of materials for study and research. This awareness is more difficult to achieve in the case of foreign law where location and evaluation of existing source materials is often formidable, if not impossible, in some instances. The Library of Congress series of legal guides to foreign law has served, therefore, as an important channel of information for this nation's bench, bar, and scholarly community.

The idea of a series of legal guides to foreign law was conceived in the Library of Congress when Dr. Edwin M. Borchard, international legal scholar, law professor, distinguished author, and Law Librarian, 1911-16, published in 1912 the first guide on German law and legal literature. The German guide was followed by one on international law and continental law (1913); a guide for Spain (1915) by Thomas W. Palmer, Jr.; guides for Argentina, Brazil, and Chile (bound together, 1917), also by Dr. Borchard; a guide to France (1931) by George Wilfred Stumberg; and the legal codes of the Latin American Republics (1942).

More emphasis on Latin American countries in the series of guides became possible in the 1940's when the State Department's Interdepartmental Committee on Scientific and Cultural Cooperation allocated funds to the Library for preparation and publication of guides in various Latin American fields, including law and legal literature. A Center of Latin American Studies, sponsored by this committee, was created in 1940, and work on further Latin American guides was commenced under the editorship of Crawford M. Bishop.

In June 1944 funds for the work were withdrawn, and the task of completing the unfinished guides was taken over by the Latin American Law Section, now

the Hispanic Law Division, of the Law Library, with funds for publication again provided by the Interdepartmental Committee. Published guides to the Latin American countries now include those for Cuba, Haiti, and the Dominican Republic (bound together, 1944), prepared by Dr. Bishop and Anyda Marchant; one for Colombia, by Richard C. Backus and Phanor J. Eder (1943); and 10 others, for Argentina (1948), Bolivia (1947), Chile (1947), Ecuador (1947), Mexico (1945), Mexican States (1947), Paraguay (1947), Peru (1947), Uruguay (1947), and Venezuela (1947), all by Helen L. Clagett, formerly chief of the Hispanic Law Division of the Law Library, except for the Mexican guide, which she coauthored. The guide for Mexico most appropriately bears the name of John Thomas Vance, Law Librarian from 1932 to 1943, as the other author. Mr. Vance had developed the Mexican project, traveling extensively in Mexico and South America, collecting materials, and studying the whole field of Pan American activities, but died in 1943 before he could complete the writing of the guide. These legal guides have enhanced public awareness of the political and legal literature of Latin American countries and, as a result, have strengthened inter-American research and cooperation.

Conscious of their significance, Lewis C. Coffin, Law Librarian of the Library of Congress from 1964 to 1971, decided in late 1970 to undertake the revision of the outdated guides. Encouraged by congressional and bar association inquiries about them and by a resolution of the Inter-American Bar Association urging their updating, Mr. Coffin initiated a series of revisions starting with *A Revised Guide to the Law and Legal Literature of Mexico* which was published in 1973 and coauthored by Mrs. Clagett and David M. Valderrama.

The present guide on Peru, second in the revised series, represents a major revision of the earlier work of 1947, not merely an updating of its substance. The contents have been thoroughly reorganized to enable readers to find related subjects grouped together and in a more logical sequence. The subjects covered have been expanded to include Indians, agrarian reform, territorial waters, and other new preoccupations of legislative bodies and study groups. Furthermore, so far as can be determined, this revised guide is the first and only attempt to survey systematically and comprehensively legislation generated by Peru's military government which came to power through a bloodless coup in October 1968. Since then the military leaders have energetically designed laws to reform and transform Peruvian society.

Like its 1947 predecessor, the present edition is essentially a tool to lead interested researchers to the principal sources. Beyond this aim, however, the author hopes that by combining legislative history and commentaries on the codified and statutory fields of law with exhaustive bibliographical footnotes as to the

texts and other forms of literature, the work may convey a sense of growth of the Peruvian government.

It is hoped that this guide may render useful service as a legal reference aid and especially when used with the sections of the *Index to Latin American Legislation* pertinent to Peru. The *Index* is another publication compiled periodically by the Hispanic Law Division of the Law Library and consists mainly of card entries containing citations to, and brief descriptions of, the laws, decrees, and resolutions published in the official gazettes of the Latin American countries. These research tools complement each other.

Mr. Valderrama's knowledge of Latin American legal institutions, gained from a long association with this field of study, is strengthened by several years of active legal practice in the Republic of the Philippines, a country whose legal system, like that of any Latin American country, is patterned after the civil law system. At the time this guide was written, Mr. Valderrama was a senior legal specialist in the Hispanic Law Division. He is now retired from Library of Congress service.

The political and legal history of Peru is composed of three stages: precolonial, colonial, and independent periods. These three epochs are contained within distinct time frames, yet they are very closely interrelated, as are the legal and legislative actions and enactments. Since the extensive legal history of each era would obviously require volumes, this guide will not attempt to cover any period before the independence of Peru, except where the Spanish-inherited institutions and law were maintained or still bear some influences or relations to contemporary Peruvian law and institutions. Each chapter commences with a brief legislative history from 1821 through the present code or basic body of law in force as of 1972 in a particular branch of law. A cutoff date has been set at 1972; otherwise it would have been impossible to handle and present systematically the large amount of material for inclusion in this guide.

So far as it is feasible, the source materials described in this work were carefully and individually examined. There were certain works which, although directly examined, did not provide sufficient bibliographical information to warrant a definite description, such as a law school thesis or dissertation, and thus were generally described as being "apparently" or "obviously" in that category. There are not too many of these, however, inasmuch as the inclusion of this type of work was done on a very selective basis. In a few isolated cases, where the items were not accessible either because they were missing from the Library of Congress collections or were never part of them, the author depended on data available in the Library of Congress catalogs, other bibliographical references, and

periodic literature. Footnotes are numbered consecutively within a chapter or, when desirable for the convenience of the reader, within sections.

Because of their value to the scholarly, library, and legal communities, publication of new and revised guides is being continued by the Library on a selective basis. By assignments within geographical divisions of the Law Library to meet special needs as they are identified, the Library of Congress not only seeks to support a scholarly series but also hopes to continue to serve the broad purposes of this publication program as it has for more than 60 years.

Carleton W. Kenyon
Law Librarian
Library of Congress

Contents

Foreword	iii
<hr/>	
Constitutional Law	1
<i>History and Texts</i>	1
<i>Literature</i>	13
<i>Election Law</i>	22
<hr/>	
Administrative Law	26
<i>History and Texts</i>	26
<i>Literature</i>	31
<i>Indians</i>	38
<i>Municipal Law</i>	42
<i>Financial Legislation</i>	45
<i>Taxation</i>	50
<i>Nationality and Aliens</i>	59
<i>Transportation and Communications</i>	63
LAND, WATER, AIR TRANSPORTATION	63
TELECOMMUNICATIONS	68
<i>Land Laws and Agrarian Reform</i>	69
<i>Water Laws</i>	73
<i>Mining</i>	77
HISTORY AND TEXTS	77
LITERATURE	80
<i>Petroleum</i>	84
<hr/>	
Civil Law	87
<i>History and Texts</i>	87
<i>Literature</i>	91

SPECIAL SUBJECTS 99	
<i>Persons</i>	100
<i>Family Law</i>	102
<i>Wills and Succession</i>	104
<i>Property</i>	105
<i>Obligations and Contracts</i>	107
Civil Procedure	109
<i>History and Texts</i>	109
<i>Literature</i>	112
Commercial Law	120
<i>History and Texts</i>	120
<i>Literature</i>	123
GENERAL	123
<i>Mercantile Companies</i>	128
<i>Banking and Insurance</i>	131
<i>Maritime Commerce</i>	136
<i>Bankruptcy</i>	138
<i>Patents, Trademarks, and Copyright</i>	139
<i>Industrial and Investment Legislation</i>	142
<i>Commercial Arbitration</i>	146
Criminal Law	149
<i>History and Texts</i>	149
<i>Literature</i>	153
Criminal Procedure	161
<i>History and Texts</i>	161
<i>Literature</i>	165
Judicial System	170
<i>History and Texts</i>	170
<i>Literature</i>	175
Labor and Social Legislation	184
<i>History and Texts</i>	184
<i>Literature</i>	189

Military Law	198
Public International Law	203
<i>Boundary Controversies</i>	210
<i>Peru and Bolivia</i>	211
<i>Peru and Brazil</i>	215
<i>Peru and Chile</i>	217
<i>Peru and Colombia</i>	223
<i>Peru and Ecuador</i>	228
<i>Treaties</i>	237
<i>Territorial Waters</i>	239
Private International Law	242
General Works	248
<i>History of Law</i>	248
<i>Legal Philosophy</i>	251
<i>Miscellany</i>	256
Collection of Laws	259
<i>Legal Dictionaries and Indexes</i>	264
Court Reports and Digests	268
Legal Periodicals	273
Bibliographies	280
Index	285

Constitutional Law

History and Texts

Peru, an Andean nation with 13.6 million people and the fourth largest land mass in Latin America, has had a colorful past, and its history certainly provides fascinating reading. Because this work deals with Peruvian political life and legislation from the initiation of the Republic in 1823, the interesting and picturesque history and legal institutions of the Incas and other tribes, the Spanish conquest of this extremely wealthy region by Francisco Pizarro and Diego de Almagro, and the development of the transplanted Spanish institutions are beyond its scope.

The constitutional history of Peru is characterized by the omnipresence of the military. Despite this, however, there is a continuing tendency of the government to operate within a constitutional framework, as evidenced by the number of charters adopted within the last two centuries. The adoption of a constitution in Peru follows the same basic pattern as in most Latin American countries. Whenever there is a change in government by force, a constituent assembly is convened to write a fundamental charter, legalizing the status of the incoming administration. When there is an existing legislature, a committee is created to draft the charter which is subsequently submitted to the legislature for approval. Since independence, Peru had adopted some 16 constitutions, if the ephemeral and provisional ones are counted.

Constitutionalism in Peru draws from Roman, Spanish, French, and American influences. In Latin America the early movements for independence from Spain began around 1810, and democracy was instituted in the new republics which arose after the Spanish royalist armies were successfully routed. Peru was the last of the Spanish colonies to be liberated. Although the country had participated in the early Latin American movements for independence, it was not until much later that its actual liberation was achieved under the leadership of Argentine revolutionary, Gen. José de San Martín.

Even before full control of the country was gained, San Martín, with the aid

of Bernardo Monteagudo and Juan García del Río, made the first attempt to draft a fundamental charter. This charter, labeled *Reglamento Provisional*,¹ was enforced in the liberated provinces—Trujillo, Tarma, Huaylas, and La Costa. Drafted in Huaaura and dated February 12, 1821, the document consisted of 20 articles covering the demarcation of boundaries and some administrative matters.

On July 28, 1821, after forcing the Spaniards out of Lima into the mountains of Peru, General San Martín formally declared Peru's independence and assumed the title of Protector. However, real independence had yet to be achieved.

A few months later, when more territory had been added to the liberated portion of Peru, San Martín, again with the assistance of Monteagudo and García del Río and with the additional aid of Dr. Guido, broadened the scope of the *reglamento* and renamed it *Estatuto Provisional*.² Supplementing those topics encompassed in the original instrument, the new one, dated October 8, 1821, provided for individual guarantees and duties, functions of the different branches of government, elections in the municipalities, and other administrative details.

Following these temporary charters, an acrimonious debate on the issue of what kind of government Peru should have developed between San Martín, a conservative with monarchical leanings, and liberal political leaders. Beset with these problems and the constant threat of possible attacks from the remaining Spanish forces, he decided to enlist the support of Gen. Simón Bolívar, a Venezuelan who, through a series of brilliant campaigns, had achieved independence for Colombia in 1819, the future Ecuador in 1820, and Venezuela in 1821 and had made himself master of these countries under a federated union called New Granada. These two liberators, however, had conflicting political ideologies. Bolívar wanted Peru to become part of his federated union. On the other hand, San Martín aimed at maintaining several independent nations based on the territorial divisions that had been made under the colonial regime. Following fruitless conferences between the two as to the future of Peru, representatives to a First Constituent Congress were elected by the Peruvians for the purpose, among others, of adopting a permanent constitution. Before the Congress convened, San Martín created a committee to draft a constitution. The Congress was scheduled to meet in May 1822, but due to the prevailing political turmoil, it was not until November 2 that the committee's draft³ was presented for

¹ Olivo, J. F. *Constituciones políticas del Perú . . .* Lima, Impr. Torres Aguirre, 1922. v. I, p. 5-10.

² *Ibid.*, p. [11]-23.

³ *Proyecto de constitución presentado al Congreso Constituyente del Perú por su comisión de constitución*. Tercera parte. Lima, Impr. de Gobierno, 1823. 15 p. (de oficio); 11 p. (proyecto); another ed. Impr. de Masías, 1823. 24 p.

the consideration of the Congress. Meanwhile, because of differences with Bolívar and the lack of sufficient support from Peru's political leaders, on September 20, 1822, the day the Constituent Congress was first convened, San Martín submitted to this first Peruvian Congress his resignation as Protector and soon left Peru in voluntary exile.

After the departure of San Martín, the Congress appointed a junta gubernativa, or executive committee, consisting of two civilians, Manuel Salazar y Baquijano and Felipe Antonio Alvarado, with a soldier, Gen. José de La Mar, as its chairman. On December 16, 1822,⁴ the Congress approved the *Bases de la Constitución Política de la República Peruana*, and a day later it was promulgated by the junta gubernativa. However, it was not until November 12, 1823, that this was adopted as Peru's first Constitution.⁵

The drafting committee and the legislators took into consideration the charters which had been drafted for other countries, namely the French and North American charters, Venezuela's Constitution of 1811, and Colombia's of 1821. The work of Jean Jacques Rousseau, *Le Contrat Social*, was also consulted by these bodies. The 1823 Constitution provided for a very weak arm of government which, given the realities of the social and political conditions of the time, made it impractical. The legislative branch was granted considerably more power than either the executive or judicial branches. Under these circumstances, the ruling triumvirate was overthrown by Peru's first military coup d'état, and Gen. José de la Riva Agüero, "Grand Marshal of Peru," was appointed the first president of the emerging Republic of Peru on February 27, 1823.

President Riva Agüero was no more successful than his predecessors in the task of driving away the Spaniards. Moreover, he did not get along with the Congress. It was against this background that Bolívar, already the liberator of three South American republics, set about liberating a fourth. He sent an expeditionary force under Marshal Antonio José de Sucre to invade Peru. After gaining some headway, Marshal Sucre lost no time in proclaiming, in the name of Bolívar, the Marquis of Torre Tagle as the new president of Peru. With two presidents, each claiming to be the legitimate one, political chaos followed until Bolívar finally came to Peru on September 1, 1823.

In January 1824, following a series of both public and private sessions of the

⁴ N. 53. Decreto sobre las bases de la Constitución Política de la República Peruana. In *Colección de leyes y decretos sancionados desde la jura de la independencia*. Lima, 1826. v. 2, p. 99-107.

⁵ *Constitución Política de la República Peruana jurada en Lima el 12 de noviembre de 1823*. Lima, Impr. del Estado por J. González, 1825. cxii, 52 p.

English translation. In *British and foreign state papers, 1822-23*. London, J. Harrison & Son, 1829. v. 10, p. 701-722.

Congress, Bolívar, with the acquiescence of Torre Tagle, was given “supreme dictatorial power” over Peru, which, in effect, nullified the provisions of the 1823 Constitution. Shortly thereafter, Riva Agüero was captured and exiled. At the head of an army of his own and Peruvian troops, Bolívar defeated the Spaniards in the Battle of Junín. He then entrusted the command of the armed forces to Marshal Sucre, who at the Battle of Ayacucho on December 9, 1824, ended the power of Spain in Peru, finally making independence a reality.

Bolívar reactivated the Congress, calling it into session on February 10, 1825. Within a month this body accepted his resignation as supreme dictator and later approved his proposal to become lifetime president and considered his draft constitution. On November 30, 1826,⁶ a final draft was officially adopted as the Constitution of Peru, which was promulgated on December 8 of the same year. Article 77 of this Constitution, published in Peru in 1826⁷ and Venezuela in 1827,⁸ reads: “The exercise of executive powers resides in a lifetime president. . . .” In his statement of purposes (*exposición de motivos*), Bolívar justified the need for a “*presidente vitalicio*” as follows: “The President of the Republic in our constitution is like the firm and permanent sun which gives life to the universe. This supreme authority should be perpetuated, because in leaderless jurisdictions, more than in others, a central point is needed around which the public officials and citizens may revolve.”

Meanwhile, in August 1825 Bolívar designated upper Peru as a new and independent nation, which was renamed Bolivia in his honor, and on October 3, 1826, installed Sucre as its first president.

Bolívar’s aim was to govern his proposed confederation of Colombia, Ecuador, Venezuela, Bolivia, and Peru, pursuant to the provisions of the 1826 charter. His goal, however, was never fully realized. When he returned to Venezuela, he appointed Gen. Andrés Santa-Cruz as president of the Council of Ministers and commander in chief of the armed forces of Peru. Technically, although outside Peru, Bolívar remained “lifetime president.” During his absence, the Peruvians staged an uprising in Lima. On January 27, 1827, less than two months after its promulgation, Bolívar’s “life constitution” was rejected, and the 1823 Constitution was reinstated. Sensing a new wave of nationalism and lib-

⁶ *Constitución para la República Peruana*. Lima, J. M. Masías, 1826. 120 p.

English translation. In *British and foreign state papers, 1826-27*. 1828. v. 14, p. 892-910.

⁷ *Proyecto de constitución para la República Peruana*. Lima, Impr. de la Libertad por José M. Masías, 1826. 29 p. [Bound with: Guzmán, Antonio Leocádio. *Ojeada al proyecto . . .* Lima, José María Concha, 1826. 52 p.; and *Proyecto de constitución para la República de Bolivia y discurso del Libertador*. Lima, José María Concha, 1826. 16, 30 p.]

⁸ *Proyecto de constitución para la República del Perú, que sancionada con ligeras modificaciones se promulgó y juró como ley fundamental del estado en 9 de diciembre 1826*. Caracas, 1827. 24 p.

eralism, General Santa-Cruz convened a new Congress composed of liberals, hoping that this body would elect him president. Instead, however, the liberals chose Gen. José de La Mar to become the constitutional president of Peru.

The new Congress spent nine months deliberating on various drafts⁹ for a new charter and on March 18, 1828, adopted a new Constitution¹⁰ which provided for a representative, republican type of administration and an independent judiciary and included an elaborate bill of rights.

In the ensuing years, internal feuds, plots and counterplots, and inter-American rivalries, such as Peru's intervention in Bolivia and the war with Colombia, resulted in a continuous change of leadership in Peru and neighboring countries. Invariably, military law took precedence over constitutional law.

The revolution of 1829 overthrew General La Mar and put Gen. Agustín Gamarra at the head of the Peruvian government. For the help General Santa-Cruz extended toward that end, he was rewarded with the presidency of Bolivia. During Gamarra's tenure (1829-33), the Constitution of 1828 continued to be the organic law of Peru. At the close of his term, he wanted to name Gen. Pedro Pablo Bermúdez as his successor, but in 1834 a liberal-dominated Congress once again picked a man of its choice, Gen. Luis José de Orbegoza, as the new president. In a quickly executed, albeit short-lived revolution, Gamarra deposed Orbegoza and in his place installed Bermúdez. However, in a counterrevolution, Orbegoza was easily restored to power, and Gamarra, with some of his supporters, was forced into exile in Chile. On June 10, 1834, a National Convention considered some drafted amendments,¹¹ and eventually another Constitution¹² was adopted, superseding that of 1828. A few substantial changes were made, increasing local autonomy, imposing some restrictions on the executive power, and abolishing the office of vice president. Historians later claimed that this

⁹ *Proyecto de constitución política presentado por el Ciudadano M. C. de la Llosa, Diputado al Congreso Jeneral*. Lima, Impr. de la Instrucción Peruana por S. Hurley, 1827. xix, 21 p.

¹⁰ *Constitución Política de la República Peruana dada por el Congreso General Constituyente el día 18 de marzo de 1828*. Lima, Impr. de José Masías. 40 p.

———. Lima, Impr. de la Instrucción Primaria, por J. Fabián Solórzano [1828?] 54 p.

English translation. In *British and foreign state papers, 1828-29*. London, James Ridgway, 1832. v. 16, p. 966-988.

¹¹ *Proyecto de reforma de la Constitución Política de la República Peruana presentado a la Convención por la comisión nombrada al efecto*. Lima, Impr. del Constitucional, 1833. 48 p.

———. Lima, L. de la Lama, 1833. 48 p.

Proyecto de reforma de la Constitución Peruana, en cuanto al poder judicial, trabajado por el Ciudadano Manuel Lorenzo Vidaurre de orden de la Exma. Corte Suprema de Justicia, para presentarlo a la Convención . . . Lima, Impr. de J. M. Masías, 1833. 46 p.

¹² *Constitución Política de la República Peruana dada por la Convención Nacional el día 10 de junio de 1834*. Lima, Impr. del Constitucional, por Lucas de la Lama [1834?] 45 p.

English translation. In *British and foreign state papers, 1834-35*. 1852. v. 23, p. 297-322.

charter represented a signal victory for the liberals' view that the executive branch should be weaker than the legislative branch.

The 1834 Constitution barely had an opportunity to prove itself. In 1836 General Santa Cruz, who had always dreamt of becoming master of both Bolivia and Peru, succeeded through elaborate plots to establish the Peru-Bolivian Confederation. He then divided Peru into North and South Peru, establishing their capitals respectively in Lima and Arequipa. Two constitutions were adopted, for North Peru, a constitution drawn up in Huaura was promulgated on August 3, 1836,¹³ and one for South Peru was adopted on March 17, 1836, in Sicuaní.¹⁴ These constitutions were decreed to be provisional until a federal constitution could be drawn up. Under the terms of these instruments, President Orbegozo surrendered his powers to Santa-Cruz, who was given the title of Supreme Protector. The formal confederation having been accomplished on October 28, 1836, Santa-Cruz appointed three delegates each from Bolivia and North and South Peru to meet in Tacna and formulate an organic act for the confederation. A charter was drafted by these delegates and adopted as the Constitution of May 1, 1837.¹⁵ However, general disagreement with its terms, coupled with internal unrest and a war with Chile in 1838, prevented its enforcement.

In the war with Chile, the exiled Gamarra and his followers joined forces with the Chilean invading troops. Together, they ousted Santa-Cruz, dismembering in effect the Peru-Bolivian Confederation. When the Peruvian Congress convened again, it chose Gamarra as president for a second time. During his second term (1839-41) he convoked a Congress in the city of Huancayo; after three months of debate, the Congress gave Peru a new constitution on November 10, 1839.¹⁶ The instrument, popularly referred to as the *Constitución de Huancayo*, has been described as having better technical construction, distribution of subject matter, and legal terminology than any of the previous charters. It was a practical and authoritative document which did not attempt to introduce too many reforms or changes. In spite of political disturbances, uprisings, and constant changes in leadership, this charter remained unrepealed for 16

¹³ Olivio, J. F. *Constituciones políticas del Perú* . . . Lima, Impr. Torres Aguirre, 1922. v. I, p. 194-199.

¹⁴ *Ibid.*, p. 199-200.

¹⁵ Treaty between the Republics of North and South Peru and Bolivia serving as a constitution for the Peru-Bolivian Confederation. Tacna, May 1, 1837. In *British and foreign state papers, 1838-39*. 1856. v. 27, p. 1360-1368.

¹⁶ *Constitución Política de la República Peruana dada por el Congreso Jeneral el día diez de noviembre de 1839*. Lima, Impr. de José Masías, 1839. 28 p.; another ed. 1847. 48 p.

English translation. In *British and foreign state papers, 1839-40*. 1857. v. 28, p. 236-260.

years. Between 1842 and 1845, however, following the death of President Gamarra in a confrontation with Bolivia, it was no more than a paper constitution. With Ramón Castilla's assumption of the presidency in 1845, observance of the 1839 Constitution was restored and continued through 1855.

Although Gen. José Rufino Echenique had been elected in 1851 to succeed Castilla, a revolution in 1855 brought Castilla back into power for a second term, lasting through 1862. On October 22, 1855, a National Convention declared the 1839 Constitution repealed by popular will. A provisional statute (*estatuto provisorio*) was adopted on July 26, 1855,¹⁷ consisting principally of an enumeration of the powers of the executive. A new Constitution, which was finally promulgated by the National Convention on October 19, 1856,¹⁸ was designed to increase legislative powers, decentralize authority to the provinces, and curtail the influence of the army and the clergy. For the first time in a Peruvian constitution, individuals were granted the rights of association and collective petition, and slavery and capital punishment were abolished. The electoral colleges were also abolished, and members of the legislature were to be elected directly by the people. This body would resolve itself into a senate and a chamber of deputies by drawing lots.

The too liberal provisions of the 1856 Constitution soon required revision. In 1858 President Castilla called the Congress to an extraordinary session for this purpose. The legislators, however, preferred to debate other matters, and no definite constitutional reforms came from this body. A new Constituent Congress met in 1860 and undertook this task more seriously. A constitutional committee composed of Chairman Antonio Arenas, José María Pérez, José Nicolás Rabasa, Angel Ugarte, José María Jáuregui, Julián Sandoval, and Pedro José Calderón was appointed to consider a draft by Dr. Felipe Pardo y Aliaga. With the committee's approval, the draft was presented to the Congress on August 22, 1860.¹⁹ The debates over its provisions lasted from August 28 to November 10, and the draft, as approved by the Congress, was finally promul-

¹⁷ Olivo, *op. cit.*, p. [241]-250.

¹⁸ *Constitución Política del Peru*. Lima, Impr. de Félix Moreno, 1856. 24 p.

Constitución de la República Peruana dada el 13 de octubre de 1856 y promulgada en 19 del mismo mes. [n.p., n.d.] 32 p.

La Constitución y leyes orgánicas de la República Peruana dadas por la Convención Nacional en 1856. Lima, Impr. Libre, 1857. 136 p.; another ed. Impr. de J. M. Masías, 1860. 114 p.

English translation. In *British and foreign state papers, 1856-57*. 1866. v. 47, p. 1141-1156.

¹⁹ *Proyecto de constitución política escrito por el Sr. D. Felipe Pardo y Aliaga y presentado a la Convención Nacional por los ss. diputados . . .* 2.d ed. Lima, Tip. de A. Alfaro y Ca., 1859. 282 p.

gated as the Constitution on November 13, 1860.²⁰ Patterned after the U.S. Constitution, this charter served, with some interruptions, as Peru's basic law for over half a century. It provided for a bicameral legislature to meet every two years and a representative committee with certain specified duties and powers which remained in permanent session. The presidential term was fixed at four years, and two vice presidencies were created.

The country continued to be shaken by revolts. Enforcement of the 1860 Constitution was suspended following the revolution of 1865, which installed the dictatorship of Col. Mariano Prado. The Congress called by Prado in 1867 resolved to readopt the Estatuto Provisorio of 1855 and later wrote a Constitution of its own on August 29, 1867.²¹ More or less a copy of that of 1856, the 1867 Constitution remained in force only until January of the following year, when the successful revolution in Arequipa, under the leadership of Col. José Balta, president from 1868 to 1872, restored the 1860 Constitution. In early 1872 a short-lived revolt again suspended the 1860 Constitution, until Manuel Pardo became the first civilian president of Peru, serving from the middle of 1872 to 1876. In 1879 a dictatorship under Nicolás de Piérola suspended for the third time the 1860 Constitution, and in its stead, a brief provisional statute was issued on December 27, 1879, known as the Estatuto de Piérola.²² A more lengthy but likewise provisional statute was promulgated in Ayacucho on September 11, 1881.²³

Between 1881 and 1885, the mantle of leadership in Peru moved with doubtful validity and lightning speed from Piérola to Francisco García Calderón, Lizardo

²⁰ *Constitución Política del Perú, reformada por el Congreso de 1860*. Ed. oficial. Lima, Impr. de José María Masías, 1860. 30 p.

La Constitución y leyes orgánicas del Perú dadas por el Congreso de 1860. Ed. oficial. Lima, Impr. del Estado, 1863. 174 p.; another ed. 1869. 294 p.

La Constitución del Perú, leyes y resoluciones dictadas por los congresos de 1868-70, 1872-73. Lima, Impr. del Estado, 1873. 1071 p.

Constitución de 1860. Ley de elecciones y de registro cívico . . . Ed. oficial. Lima, Impr. del Estado, 1888. 102 p.; 1890. 122 p.; 1895. 118 p.

La Constitución del Perú de 1860. Con sus reformas hasta 1886 . . . Ed. oficial. Lima, 1887. 46 p.

Constitución de 1860 con sus reformas hasta 1900, y reglamento interior de las cámaras legislativas. Ed. oficial. Lima, Impr. del Estado, 1901. [various pagings]

La Constitución del Perú de 1860. Con sus reformas hasta 1893 . . . coleccionadas y anotadas por Ricardo Aranda. Ed. oficial. Lima, Impr. de la H. Cámara de Diputados, 1893. 862 p.; 2.ed. Libr. é Impr. Gil, 1916. 905 p.

English translation. In *British and foreign state papers; 1887-88*. [1895] v. 79, p. 721-738.

²¹ *Constitución Política de la República*. Ed. oficial. Lima, Impr. del Estado [1867] 39 p.

Constitución Política del Perú. 1867. Lima, Impr. de "El Nacional," 1867. 38 p.

²² Olivo, *op. cit.*, p. 341-346.

²³ *Estatuto Provisorio de la República*. Ayacucho, Impr. de "El Progreso," 1881. 20 p.

Montero, and Miguel Iglesias, until in 1886 Andrés Avelino Cáceres was popularly elected president, pursuant to the 1860 Constitution, and served as such until 1890. From 1886 to 1920 the restored Constitution was officially in force without any serious interruptions throughout the presidential terms of Remigio Morales Bermúdez (1890-94), Justiniano Borgoño (1894, brief presidency by coup d'état), Cáceres (1894, short-lived second term by election), Piérola (second term, 1895-99), Eduardo López de Romaña (1899-1903), Manuel Candamo (Sept. 8, 1903, until his death in office in May 1904), José Pardo y Barreda (1904-07), Augusto Bernardino Leguía (1908-12), Guillermo Enrique Billinghurst (1912-14), and José Pardo (second full term, 1915-19).

In a plebiscite held on August 25, 1919, following the inauguration of President Leguía for a second term, the people of Peru were asked to vote on 18 proposed amendments to the Constitution. The Constituent Assembly considered the plebiscite results in the drafting of a new fundamental charter, which was finally promulgated on January 18, 1920.²⁴ This new document contained political and social reforms principally meant to accord legal recognition to the Indian communities and to decentralize the administration. Many of its labor provisions were adopted from the Mexican and Weimar constitutions. Historians allege, however, that during President Leguía's term the Constitution was not fully observed.

In 1924 in Mexico City, Víctor Raúl Haya de la Torre, a Peruvian nationalist, organized a proletarian based party called the Alianza Popular Revolucionaria Americana (Arista or APRA). Founded originally as a revolutionary organization for all of Latin America, the party and its ideology which was called Aprismo became a major political factor only in Peru. In later years, this party played a significant, albeit controversial role in Peruvian politics as the champion of social reform and justice.

A revolution causing Leguía's downfall occurred in August 1930, putting Luis Sánchez Cerro into power in 1931. The succeeding Junta Nacional de Gobierno, believing a new constitution to be urgently needed, convoked a Congress for this purpose. The preliminary draft was drawn up by a commission under the

²⁴ *Constitución para la República del Perú dictada por la Asamblea Nacional de 1919*. Lima, Impr. Torres Aguirre, 1920. 30 p.

———. Lima, Orellana y Cía., 1921. 44 p.

———. Lima, Libr. Francesa y Casa Edit. E. Rosay, 1922. 47 p.

La Constitución de 1920 y el reglamento interior de las cámaras legislativas. Ed. oficial. Lima, Impr. Torres Aguirre [1924] 198 p.; another ed. 1929. 223 p.

Constitución para la República del Perú dictada por la Asamblea Nacional de 1919. Con las últimas reformas hasta el 31 de diciembre de 1929. Lima, P. Acevedo, 1930. 40 p.

Constitution of the Republic of Peru, promulgated January 18, 1920. Washington, D.C., Pan American Union [1926] 28 p. (Law and treaty series, no. 4)

chairmanship of Manuel Vicente Villarán and composed of Toribio Alayza y Paz Soldán, Diómedes Arias Schreiber, Víctor Andrés Belaúnde, Carlos García Gastañeta, José León Barandiarán, Ricardo Palma, Emilio Romero, César Antonio Ugarte, and Luis E. Valcárcel. An illuminating statement of purposes by the chairman accompanied the preliminary draft,²⁵ which was completed on December 5, 1931.²⁶ A report by the members of the Supreme Court, who had been consulted on provisions relative to the judiciary, was also considered. The Constituent Congress met on December 8 to consider the draft. The conflict between the Aprista party, well represented at this meeting, and the government delayed the approval and adoption of the draft until April 9, 1933.²⁷

The 1933 Constitution established the bases for the governmental expropriation policy. Article 47 calls for the encouragement of moderate and small rural ownership and gives the government power to expropriate lands owned privately, especially those not being exploited. Going even further than anything in the 1920 Constitution, article 211 recognizes the Indians' right to their own land, specifically justifying the confiscation of private lands for apportionment to the Indian communities. In 1964 these provisions were amended by Law 15242.²⁸ Pursuant to article 47, as amended, the maximum amount of land which may be awarded to a person whether natural or juridical, is to be determined by law in accordance with the purpose to which it has been devoted, taking into consideration the demographic, geographic, and social conditions in each zone, as well as the natural and technical factors of production. In addition, the state shall extend the economic and technical assistance necessary for the development of the land. Article 211, as amended, requires specific modes of compensation established in article 29.

On April 30, 1933, Sánchez Cerro was assassinated, and Marshal Oscar R. Benavides assumed the presidency, serving until 1939. Near the end of his term,

²⁵ *Exposición de motivos del ante-proyecto de constitución del estado*. Lima, 1931.

²⁶ *Ante-proyecto de constitución del estado redactado en cumplimiento de la resolución suprema de 7 de agosto de 1931* . . . Lima, Impr. Torres Aguirre, 1931. 52 p.

Ante-proyecto de constitución del estado y exposición de motivos presentados por la comisión presidida por el Dr. Manuel Vincente Villarán. Lima, 1931.

²⁷ *Constitución Política del Perú, sancionada por el Congreso Constituyente de 1931, promulgada el 9 de abril de 1933*. Lima, Impr. Torres Aguirre, 1933. 53 p.

Constitución Política de la República, texto de la nueva Constitución sancionada por el Congreso Constituyente, promulgada el 9 de abril de 1933, con índice por orden alfabético de todos los artículos de la Constitución . . . [Lima] Libr. e Impr. "Guía Lascano" [1933?] 32 p.

Constitución Política del Perú sancionada por el Congreso Constituyente de 1931, promulgada el 9 de abril de 1933. Lima, Impr. Libertad, 1934. 51 p.

²⁸ *El Peruano*, Nov. 30, 1964.

President Benavides promulgated Law No. 8875 of April 18, 1939,²⁹ calling for a plebiscite on constitutional revision. Resulting amendments included extension of the terms of office for president and deputies from five to six years, restoration of the presidential veto, and the right of Congress to authorize the executive to promulgate legislation on certain subjects during a congressional recess. However, by the Law of December 29, 1945,³⁰ the amendments approved by this plebiscite were declared unconstitutional.

After Marshal Benavides' tenure, two civilians, Manuel Prado and José Luis Bustamante i Rivero, served in the presidency between 1939 and 1948. A coup d'état led by Gen. Manuel A. Odría catapulted him into the presidency in 1948. Like Marshal Benavides before him, General Odría held presidential elections and in 1950 was voted in as a constitutional president. Manuel Prado ran for a second term in 1956 and was elected president for the full constitutional term of six years. The last civilian to become president of Peru in contemporary times, Fernando Belaúnde Terry, was elected in 1963 and served until 1968 when, once again, the military assumed the responsibility of the direction of the state, announcing the assumption of power through a manifesto dated October 2, 1968.³¹ The Decree-Law of October 3, 1968,³² states that the military action was based on the recognition of the "economic and administrative chaos" in the country and was intended to attain the "national objectives" which were later spelled out in Decree-Law 17063 (also published as Decree-Law 1) of the same date.³³ Decree-Law 2, also of October 3, 1968,³⁴ designated Gen. Juan Velasco Alvarado as president of the Republic, in accordance with article 4 of the Statute of the Revolutionary Government.³⁵ This statute provides in its article 6 that the president shall exercise constitutionally vested functions with the concurring vote of the Council of Ministers and the Legislature, and through decree-laws passed conjointly with the members of the Revolutionary Junta. The new laws establishing and organizing the presidential office and its subordinate ministries will be discussed under the section on administrative law.

During the succession of different chiefs of state and governments since President Sánchez Cerro's time, the 1933 Constitution was never repealed, although

²⁹ *Ley No. 8875. Plebiscito nacional de 1939*. Lima, Tall. de Linotip. [1939] 32 p.

³⁰ *Ley No. 10334, que deroga la ley 8929 que promulgó el plebiscito*. In *El Peruano*, no. 1544, Feb. 6, 1946.

³¹ *El Peruano*, Oct. 4, 1968.

³² *Ibid.*

³³ *Leyes y resoluciones de carácter general de la República del Perú*. 1968. v. 15, p. 941. (Ministerio de Justicia y Culto)

³⁴ *El Peruano*, Oct. 4, 1968.

³⁵ *Ibid.*

there have been many amendments and intermittent suspension of the individual guarantees, either throughout the nation or in certain designated areas. During his 1945-48 presidential term, Bustamante, presumably as a result of an impending deadlock in the two houses of Congress, resolved to call a constituent assembly to draft a new constitution, among other tasks. However, before such an assembly could be convened, he had fallen from power. In 1967, during President Belaúnde's tenure, a commission was created by Supreme Decree 15 of September 27, 1967,³⁶ to undertake the study and systematic revision of the Constitution. Before any serious work could be undertaken, however, the revolutionary government of General Velasco assumed control of the state, resulting once again in the suspension of the individual guarantees of the Constitution.³⁷

The 1933 Constitution remains as the legal framework within which the present military government in Peru purports to function. Under this charter, the state lays claim to subsoil rights, allows dual nationality in certain cases, and restricts alien ownership of frontier lands. Other interesting features should be mentioned, although they are inoperative under the present regime. According to the Constitution, as amended to date, provisions are made for a first and second vice president to serve with the president of the Republic. The powers of the executive are limited by an elected legislature and subject to the rule of law as interpreted by an independent judiciary—a system of checks and balances similar to that embodied in the U.S. Constitution. The legislature consists of a bicameral Congress with a Senate and Chamber of Deputies, whose members are to be directly elected by districts at the same time and for the same six-year term as the president. The conservative philosophy advocating that the executive should be stronger than the legislature has prevailed. The president is personally responsible for maintaining national security. He can call Congress into session, nominate and dismiss all government ministers, issue executive orders, and administer the national income. Peru's presidential system is similar in certain respects to that of the United States; the big difference, it seems, lies in the constitutionally vested power of the president of Peru to "intervene in the enactment of laws and legislative resolutions."

The constitutional development of Peru between 1939 and 1970 can be traced through an examination of several editions of the 1933 Constitution.³⁸

³⁶ *El Peruano*, Sept. 30, 1967.

³⁷ Comunicado No. 1. In *El Peruano*, Oct. 4, 1968, p. 1.

³⁸ *La Constitución del Perú. Año 1933*. Lima, Libr. e Impr. Gil, S.A. [1939?] 37 p.
Constitución del Estado con todas las modificaciones; confrontada con la autografía; comentada y concordada con leyes administrativas. Publicación autorizada por Ley 8451. Lima, Libr. e Impr. "Guía Lascano," 1939. 76 p.

While the present chief of state of Peru draws his powers by law (Decree-Law 2 of 1968 *supra*) from this Constitution, his administration does not seem to fit any of the traditional molds for a democratic regime. In his July 28, 1971, State of the Nation address, marking the 150th anniversary of Peruvian independence from Spain, President Juan Velasco Alvarado described the revolutionary government as a "social democracy." In his words: "The social order we are building will be based on the over-all concept of participatory democracy. That means a democracy in which freely organized men take part in all spheres of decision and exercise directly, or with a minimum of intermediaries, all forms of power—economic, social and political."³⁹ In the same address, however, President Velasco made it clear that government supervision of this "participatory democracy" would be the rule for an indefinite time to come.

Literature

The proyecto (draft) of Simón Bolívar's Constitution of 1826 for Peru was published contemporaneously and bound in the same volume with the text of the one promulgated in the same year for Bolivia, accompanied by the Great Liber-

Constitución del Congreso Nacional. Ed. del Congreso Nacional. Lima, 1942. 113 p.

Constitución Política del Perú, promulgada el 9 de abril de 1933; concordada con el debate que originó su dación, en el Congreso Constituyente de 1931, y con las modificaciones contenidas en las leyes nos. 8237, 9166, y 9178. [Lima, Empr. Gráf. T. Scheuch, S.A.] 1947. 70 p.

Constitución Política del Perú, promulgada el 9 de abril de 1933, concordada con las modificaciones contenidas en las leyes nos. 8237, 9166, 9178 y 10334. Ed. oficial. [Lima] 1950. 74 p.

Constitución Política del Perú, promulgada el 9 de abril de 1933, concordada con las modificaciones contenidas en las leyes nos. 8237, 9166, 9178 y 11874. Ed. oficial. [Lima] Cámara de Diputados, 1953 [i.e. 1955] 84 p.

Constitución de la República del Perú, concordado. Lima [1955?] 70 p.

La Constitución del Perú del año 1933, modificada por las leyes no. 8237 . . . Lima, Gil, 1957. 62 p.

Constitution of the Republic of Peru, 1933. Washington, Pan American Union, 1962. 27 p.

Constitución del Perú, con las últimas modificaciones. [Lima, Edit. Jurídica, S.A.] 1963. 28 p.

Constitución de la República del Perú, modificada conforme a las leyes no. 8237 creando vicepresidencias, no. 8929 consulta plebiscitaria, no. 9166 sobre arzobispados y obispados, no. 9178 sobre mandato y renovación de los poderes ejecutivo y legislativo, con un índice completo de títulos y materias por artículos. [Lima] Libr. e Impr. Guía Lascano, Suc. A. López Dominovich [1940?] 74 p.; 2.ed. [1945] 72 p.; 3-8.eds. (?) 9.ed. [1956?] 76 p.; 10.ed. [1957?] 76 p.; 11-14.eds. (?) 15.ed. 1963. 76 p.; 16.ed. (?) 17.ed. 1964. 77 p.; 18.ed. 1965. 88 p.; 19-20.ed. (?) 21.ed. 1970. 88 p. [Title and contents vary with addition of amending laws]

³⁹ "Mensaje de Velasco de 150 aniversario de independencia." In *La Prensa*, July 29, 1971. p. 4-6.

ator's address and a commentary on the draft by Antonio Leocadio Guzmán.¹ Another edition of this draft was also published in Arequipa.²

A substantial number of constitutional reforms to be considered by the National Convention of 1833 was drafted by a committee appointed for this purpose in the same year.³ The delegate from Cuzco appended a separate draft for articles 3 and 23. Amendments to articles concerning the judiciary were recommended and explained at length by Dr. Manuel Lorenzo Vidaurre⁴ at the request of the Supreme Court. These were also presented to the convention for its consideration.

Two early treatises were published in 1854 and 1855. The first, by Toribio Pacheco,⁵ examines the status of Peru before its independence and attempts to analyze the country's postindependence fundamental charters. Apparently, the author intended to write a second part to this work, but as far as can be ascertained, it was never published. The second treatise, by Felipe Masías,⁶ treats of the general principles of constitutional law. An appendix deals with the theory of the state.

A textbook on constitutional law by Dr. José Silva Santistéban,⁷ a former Senator of Peru, first published in 1856, was popular enough to warrant four editions published in various countries. The 1891 edition was reprinted in 1914.

The draft of a constitution⁸ for Peru was drawn up by Felipe Pardo y Aliaga and was published with extensive commentaries by Dr. José Antonio de Lavalle. A second edition appeared in 1859.

¹ *Proyecto de constitución para la República Peruana*. Lima, Impr. de la Libertad por José M. Masías, 1826. 29 p. [Bound with: Guzmán, Antonio Leocadio. *Ojeada al proyecto . . .* Lima, José María Concha, 1826. 52 p.; and *Proyecto de constitución para la República de Bolivia y discurso del Libertador*. Lima, José María Concha, 1826. 16, 30 p.]

² *Proyecto de constitución para la República Peruana*. Arequipa, Impr. del Gobierno, 1826. 30 p.

³ *Proyecto de reforma de la Constitución Política de la República Peruana presentada a la Convención por la comisión nombrada al efecto*. Lima, Impr. de la Constitución, 1833. 48 p.

⁴ Vidaurre, Manuel Lorenzo. *Proyecto de reforma de la Constitución Peruana en cuanto al poder judicial*. Lima, Impr. de J. M. Masías, 1833. 46 p.

⁵ Pacheco, Toribio. *Cuestiones Constitucionales*. Arequipa, Impr. de F. Ibáñez y Hno., 1854-

⁶ Masías, Felipe. *Breves nociones de la ciencia constitucional . . .* Lima, Impr. de J. M. Masías, 1855. 160, xxviii p.; 2.ed. 1860. 215 p. [Also bound with: Vigel, Francisco de Paula. *Ojeada al equilibrio entre las dos potestades*. 2.ed. Lima, 1857, and his *Carta al Papa*. 3.ed. Lima, 1857]

⁷ Silva Santistéban, José. *Curso de derecho constitucional*. Lima, 1856. 117 p.; 2.ed. (?) 3.ed. Paris, A. Bouret é Hijo, 1874. 380 p.; 4.ed. Paris-México, 1891. 380 p.; 4.ed. [reprint] Paris-México, Libr. de la Vda. de Ch. Bouret, 1914. 380 p.

⁸ Pardo y Aliaga, Felipe. *Proyecto de constitución política, escrito por . . . y presentado a la Convención Nacional . . . con algunas explicaciones y comentarios por José Antonio de Lavalle y Arias de Saavedra*. [1.ed. ?] 2.ed. Lima. Tip. de Aurelio Alfaro y Ca., 1859. 282 p.

The representative system of government is the topic of a brochure published anonymously in 1860.⁹ Although this brochure touches on the various forms adopted in other countries, it is devoted mainly to Peru's problems and specific provisions in the Constitution of 1856.

A critique on early constitutions of Peru was published in pamphlet form in 1860.¹⁰

The texts of the Constitution of 1860 and other related laws were annotated by Manuel Fuentes and Luis E. Albertini¹¹ for a publication issued following the adoption of that constitution. Comparison is made to the correlative provisions of the charter of 1856. Fuentes was also author of a general treatise on constitutional law.¹²

The legal authority Dr. Luis F. Villarán, grandson of the first chief justice of the Superior Court of Lima, wrote a textbook on constitutional law,¹³ which was published in a second edition seven years after the appearance of the first. Following this, he published some of his lectures at the University of Lima¹⁴ and issued an annotated text of the Constitution with extensive comments.¹⁵

Years later, Dr. Villarán's son Manuel Vicente, who would later become an eminent jurist, statesman, historian, and authority on constitutional law, issued a 47-page work comparing the Constitutions of 1860 and 1920¹⁶ by showing their texts in parallel columns. In 1962, four years after his death, Dr. Manuel Villarán's addresses, lectures, and articles were collected in one volume¹⁷ and published with a preface by Dr. Jorge Basadre. In one of the articles in this collection, Dr. Villarán makes an interesting observation on Peru's 1823 Consti-

⁹ *El sistema representativo y la cuestión del día*. Lima, Establecimiento Tip. de Aurelio Alfaro y Ca., 1860. 62 p.

¹⁰ *Las constituciones de Perú y la situación actual de ésta república*. Lima, Impr. de J. M. Masías, 1860. 32 p.

¹¹ *La Constitución y leyes orgánicas del Perú dadas por el Congreso de 1860 comparadas con las que sancionó la Convención Nacional de 1855, por Manuel A. Fuentes*. Lima, Impr. de la Gaceta Judicial, 1861. 158 p. [On cover title the name of Luis E. Albertini appears as joint author]

¹² Fuentes, Manuel Atanasio. *Derecho constitucional universal é historia público peruano*. Lima, Impr. del Estado, 1874. 2 v.

¹³ Villarán, Luis Felipe. *Curso de derecho constitucional positivo*. Lima, 1875; 2.ed. Impr. de J. F. Solís, 1882. 194 p. [Title varies]

¹⁴ ———. *Derecho constitucional filosófico. Lecciones dadas en la Facultad de Ciencias Políticas y Administrativas*. Lima, Impr. de J. F. Solís, 1888. 251 p.

———. *Lecciones de derecho constitucional peruano, dictadas en la Universidad de Lima en 1898 . . .* Lima, Tip. de "La Ley," 1898. 77 p.

¹⁵ ———. *La Constitución Peruana comentada*. Lima, E. Moreno, 1899. 378 p.

¹⁶ Villarán, Manuel Vicente. *Las constituciones de 1860 y 1920, concordadas para uso de los estudiantes de derecho constitucional*. Lima, Libr. é Impr. Gil, 1920. 47 p.

¹⁷ ———. *Páginas Escogidas*. Lima. 1962. 467 p.

tution. He states that it was bound to prove futile, especially in a period characterized by the disappearance "of the norms and discipline and social restraint, the absence of an experienced ruling class," and a continuing state of war which awakened all the "baser appetites" and destroyed the "civic spirit which is necessary to give stability to a republic."¹⁸

A catechism on the contents of the 1860 Constitution for use in schools was published in Cuzco by Dr. Eliseo Araujo.¹⁹

The provisions of this Constitution are also the subject of a basic textbook by Dr. Miguel A. de la Lama, entitled *La Constitución explicada . . .*, which was published in two editions. Dr. de la Lama also published, in several editions, *Texto de Constitución y leyes orgánicas . . .*, a school text covering the Constitution and the related or implementary organic laws.²⁰ Since there is great similarity in the contents, as well as a continuity of imprint dates of the various editions of both works, it is possible that the *Texto* is actually another edition of the original title. The fourth edition of the *Texto* credits Dr. Pedro C. Goitzolo with having updated the text of the 1860 Constitution in accordance with amendatory laws in force as of December 31, 1912.

Some constitutional amendments proposing changes in terminology, sequence, and contents of articles were published in 1895 by Dr. de la Lama²¹ and others in 1896 by a Consejo Gubernativo.²² An appendix to the consejo's draft contains the substantiating and explanatory remarks of the council's members.

In 1898 a textbook was produced by Máximo M. Vásquez,²³ a constitutional law professor. The work consists of an annotated text of the 1860 Constitution, with individual lectures on the legal bases of various provisions.

¹⁸ *Ibid.*, p. 42.

¹⁹ *Constitución Política del Perú. Cuaderno redactado por Eliseo Araujo*. Cuzco, Impr. é Libr. de M. F. Minauro, 1879. [imperfect copy]

²⁰ Lama, Miguel A. de la. *La Constitución explicada para el uso de las escuelas y colegios*. Lima, Impr. de Gómez y Ledesma, 1888, 95 p.; 2.ed. Impr. Ledesma, 1897, 137 p. [Title varies; 2.ed. reads, *La Constitución del Perú con sus reformas hasta 1897 explicada y anotada para las escuelas y colegios por . . .*]

———. *Texto de Constitución y leyes orgánicas para uso de colegios*. [1-2.ed. ?] 3.ed. Lima, 1902; 4.ed., por Pedro C. Goitzolo. Lima, Impr. Gil, 1913. 310 p.

²¹ ———. *Constitución del Perú. Proyecto trabajado por encargo del "Centro Federal."* Lima, 1895. 96 p.

²² *Proyecto de reforma de la Constitución de 1860 conforme al dictámen del Consejo Gubernativo*. Lima, Impr. de "El País," 1896. 50, xxvi p.

²³ Vásquez, Máximo M. *Estudio de la Constitución Peruana*. Lima, Libr. é Impr. Gil, 1898. 285 p.

An official publication of drafted amendments was edited by the Peruvian Senate in 1911.²⁴

In 1913 Dr. Mariano Aguilar contributed an elementary textbook²⁵ dealing with the 1860 Constitution and related charters. An erudite lecture on needed constitutional amendments was delivered by Dr. Mariano H. Cornejo²⁶ on July 3, 1915. Three years later, Alfonso Benavides Loredó²⁷ sketched in a thesis the constitutional development of Peru.

The history of the various constitutions of Peru, as drafted or influenced by Bolívar, Santa-Cruz, and other presidents, is discussed in a monograph by Jacinto Sixto García.²⁸ This was extracted from *Mis Memorias Intimas*, a more comprehensive work of a general nature.

A valuable index-digest analyzing the provisions of the 1920 Constitution and some of the codes and laws in force at the time of publication was contributed by Jenaro Ernesto Herrera.²⁹

Appearing in 1922 was an official annotated edition of the same Constitution and of subsequent organic and implementary laws enacted between 1919 and 1922. The editor and commentator was Guillermo Olaechea,³⁰ a professor at San Marcos University.

In 1919 Carlos Aurelio León published a small pamphlet³¹ treating of constitutional reforms proposed under the Decree of July 10, 1919. This decree was promulgated by President Augusto B. Leguía following the revolution of July 4, 1919, which ousted President José Pardo.

An important reference work in the English language by Prof. Graham H. Stuart³² shows the trends and events leading up to the individual charters

²⁴ *Proyectos de reformas constitucionales*. Lima, Empr. Tip. Lártiga, 1911. 33 p. (H. Cámara de Senadores)

²⁵ Aguilar, Mariano. *Estudio de la Constitución Peruana*. Madrid, Edit. del Corazón de María, 1913. 120 p.

²⁶ Cornejo, Mariano H. *Las Reformas Constitucionales*. Lima, Impr. del Centro Editorial, 1915. 44 p.

²⁷ Benavides Loredó, Alfonso. *Bosquejo sobre la evolución política y jurídica de la época republicana del Perú*. Lima. P. Acevedo, 1918. 281 p. [Thesis]

²⁸ García, Jacinto Sixto. *San Martín, Bolívar, Gamarra, Santa Cruz, Castilla y las constituciones del Perú*. Lima [La Opinión Nacional] 1919. 37 p.

²⁹ Herrera, Jenaro Ernesto. *comp. Índice alfabético analítico de la Constitución Política de la República, promulgada el 18 de enero de 1920 . . .* Lima, Orellana y Ca., 1920. 57 p.

³⁰ *La Constitución del Perú dada por la Asamblea Nacional de 1919, comentada, anotada y concordada . . . por Guillermo U. Olaechea . . . Publicación oficial*. Lima, Impr. Americana, 1922. 647 p.

³¹ León, Carlos Aurelio. *Patria nueva, la reforma constitucional en 1919*. Lima, Libr. e Impr. Gil, 1919. 40 p.

³² Stuart, Graham H. *The government system of Peru*. Washington, The Carnegie Institute of Washington, 1925. 156 p.

adopted between 1821 and 1920 and the significant differences and variations of each one from its immediate predecessor. Chapters containing discussions of the executive, legislative, and judicial branches, territorial and municipal governments, political parties and elections make up more than half of the work. The English translation of the 1920 Constitution is also included.

In 1924 Oscar G. Mantilla issued a record of parliamentary deliberations on a constitutional amendment introduced by the Peruvian Senate on August 2, 1922, proposing a limitation on the presidential term to five years and granting an incumbent the right to reelection.³³

A collection of debates and interviews on constitutional problems by a member of the Chamber of Deputies from Amazonas, Dr. Ricardo Feijoó Reyna, was published in a two-volume work.³⁴

Dr. Toribio Alayza y Paz Soldán, a professor at the Catholic and San Marcos Universities, issued in 1928 a collection of his classroom lectures on constitutional law.³⁵ His students later compiled and edited his lectures³⁶ and published them as a school text under his authorship, as a tribute to him. Following this textbook, Dr. Alayza published an excellent treatise,³⁷ also for college use, dealing with constitutional law in general and comparative terms.

An editorial dealing with the plebiscite of 1939 on constitutional reforms was published by its author, Dr. Carlos Concha,³⁸ as a separate monographic item shortly after its initial appearance in the Lima newspapers. The plebiscite is also the subject of an informative pamphlet³⁹ by an unknown author.

Dr. M. Julio Delgado A., chief of the Office of the Legal Counsel on Taxation, published the text of the 1933 Constitution with annotations involving mostly financial and economic legislation.⁴⁰

The same constitution is the subject of a thesis presented to the Catholic Uni-

³³ Mantilla, Oscar G. *La reforma de la constitución y el criterio parlamentario del Perú*. Lima, Impr. "La Tradición," 1924. 161 p.

³⁴ Feijoó Reyna, Ricardo. *Cuestiones Constitucionales*. Lima, Impr. "La Confianza." 1934. 2 v.

³⁵ Alayza y Paz Soldán, Toribio. *Derecho constitucional general y del Perú . . .* Lima, Emp. Edit. Cervantes, 1928. 182 p. [Author's name is alternately spelled Toribio Alayza Paz Soldán]

³⁶ ———. *Derecho constitucional del Perú y leyes orgánicas de la República*. Lima, Sanmartí y Cía., S.A., 1934. 128 p.

³⁷ ———. *Derecho constitucional general y comparado (curso universitario)* [Lima] 1935. 295 p.

³⁸ Concha, Carlos. *El Plebiscito*. [Lima] 1939. 27 p.

³⁹ *Las reformas constitucionales del Perú*. [n.p., 1939] 29 p.

⁴⁰ Delgado A., M. Julio. *Constitución del Estado*. Lima, Libr. é Impr. Guía Lascano. 1939. 78 p. (Legislación financiera y económica del Perú)

versity by José Pareja Paz-Soldán in 1939.⁴¹ Five years later, he published an exhaustive and scholarly work to complement, in his words, his 1939 thesis. This second work describes in detail the historical aspects of the 10 most important charters adopted since Peru's independence. The author deals with the Constitutions of 1823 and 1826 and the Provisional Statute of 1855 and describes the others as the "liberal" Constitutions of 1828 and 1834, the "authoritarian and conservative" Constitution of 1839, the "radical" Constitution of 1856, the "wisely amended" Constitution of 1860, and the "picturesque" Provisional Statute of 1880, and the "desperate hope of a New Country," the Constitution of 1920.⁴² In 1951 Dr. Pareja Paz-Soldán decided to rewrite and enlarge his 1939 thesis, publishing it in Lima as a second edition. The emphasis of the work shifted to the development of the various branches of government and the constitutional principles as established in Peruvian practice. The successful revised work eventually merited several editions, running through 1966.⁴³ Using basically identical materials, this author had another work published in Madrid as part of a series of publications on the constitutions of Latin America. Approximately one-third of this particular book consists of the texts of Peru's various constitutions and important related documents.⁴⁴

The dean of the law school of San Marcos University, Dr. Lizardo Alzamora Silva, published a treatise⁴⁵ intended for use by his students as a text in a course he taught in constitutional law. Although it was marked volume one, apparently no second volume was published. The same author did a monographic sketch on the constitutional development of Peru, consisting principally of three of his law school lectures.⁴⁶ He is also the author of a detailed syllabus for two of his courses on constitutional law. In one work published in 1944,⁴⁷ he traces the evolution of Peruvian constitutionalism, beginning on August 22, 1930, when a revolution terminated the Constitution of 1920. In another work published

⁴¹ Pareja Paz-Soldán, José. *Comentarios a la Constitución Nacional*. Lima, Tall. Gráf. del Hospital "Víctor Larco Herrera," 1939. 477 p.

⁴² ———. *Historia de las constituciones nacionales*. Lima [Gráf. Zenit] 1944. 222 p.

⁴³ ———. *Derecho Constitucional Peruano*. [1.ed. supra] 2.ed. Lima [Edit. Lumen] 1951. 428 p.; 3.ed. 1963. 502 p.; 4.ed. 1966. 604 p. [Printer varies]

⁴⁴ *Las Constituciones del Perú; exposición, crítica y textos*. [Recopilación y estudio preliminar de] José Pareja Paz-Soldán. Madrid, Ediciones Cultura Hispánica, 1954. 1076 p. (Las Constituciones Hispanoamericanas, 6)

⁴⁵ Alzamora Silva, Lizardo. *Derecho constitucional general y del Perú*. Lima, Libr. é Impr. Gil, S.A., 1942. v. 1 (Derecho Constitucional General)

⁴⁶ ———. *La evolución política y constitucional del Perú independiente . . .* Lima, Libr. é Impr. Gil, S.A., 1942. 58 p.

⁴⁷ ———. *Programa razonado de derecho constitucional del Perú. 1.pte. Historia constitucional del Perú*. Lima, Libr. é Impr. Gil, S.A., 1944. 163 p.

in the same year,⁴⁸ Dr. Alzamora discusses briefly the subject of constitutional law, without any particular references to Peruvian practices and antecedents.

The first volume of Dr. Víctor Andrés Belaúnde's exhaustive work on the international relations of his country discusses the first constitution of Peru in the light of international law.⁴⁹ The jurisdiction over the Ecuadorean provinces of Maynas and Jaén, a controversy related to the constitutional provisions and affected by the various treaties, is the main topic. Dr. Belaúnde is also author of an earlier general treatise⁵⁰ on constitutional law and a scholarly work in English dealing with the political ideas and programs initiated by Simón Bolívar.⁵¹ About 20 years after the publication of the latter work, Belaúnde published a Spanish edition of the same book. In 1967 the original English edition was reprinted by special arrangement with the Johns Hopkins Press.

Pursuant to a resolution adopted at the third meeting of the Pan American Institute of Geography and History held in Lima in March 1941, a very interesting monograph on the Spanish Constitution of 1812 was published. The resolution recommended that studies be made of the Cortes of Cádiz and the influence of the 1812 Spanish Constitution on those charters subsequently adopted in the American Republics. The monograph was contributed by Luis Alayza y Paz Soldán⁵² and relates particularly to the work of the Peruvian delegates to the Cortes, headed by Dr. Vicente Morales y Duárez.

In 1946 a brochure appeared urging the reincorporation of the presidential veto, which was one of the reforms approved in the plebiscite of 1939 but was declared unconstitutional in 1945.⁵³

In the same year Manuel Orellana Aguero produced a handbook which stresses constitutional individual liberties.⁵⁴ Cumulated mainly from the courses on constitutional law which he taught at the National Police Academy, the

⁴⁸ ———. *Programa de derecho constitucional general* . . . Lima [Tall. de Linotípia] 1944. 30 p.

⁴⁹ Belaúnde, Víctor Andrés. *La Constitución inicial del Perú ante el derecho internacional*. Lima, Impr. Torres Aguirre, 1942. 468 p. (*His La vida internacional del Perú*, 1—Relaciones con el Ecuador)

⁵⁰ ———. *El Derecho Constitucional*. Lima, 1933.

⁵¹ ———. *Bolívar and the political thought of the Spanish-American Revolution*. Baltimore, The Johns Hopkins Press, 1938. 451 p. (The Albert Shaw lectures on diplomatic history, 1930); reprint. New York, Octagon Books, Inc., 1967. 451 p.

———. *Bolívar y el pensamiento político de la Revolución Hispanoamericana*. Madrid, Ediciones Cultura Hispánica, 1959. 433 p.

⁵² Alayza y Paz Soldán, Luis. *La Constitución de Cádiz, 1812. El egregio limeño Morales Duárez*. Lima, Tall. Gráf. de la Edit. Lumen, S.A., 1946. 98 p.

⁵³ *La necesidad del veto*. Lima, 1946. 31 p.

⁵⁴ Orellana Aguero, Manuel. *Derecho constitucional peruano; lecciones dictadas en la Escuela Nacional de Policía*. Lima, [Edit. P.T.C.M.] 1950. 92 p.

material in the handbook is intended to benefit the police cadet, principally, and the general public, secondarily.

Robert Havens Morey published a work in English, *Peru Stands for Basic Rights*.⁵⁵ By systematically comparing the constitutional provisions of Mexico, Brazil, Paraguay, Uruguay, Argentina, Chile, Bolivia, Denmark, and Norway with those of Peru, Mr. Morey discovers 10 basic rights common to these charters and proceeds to analyze these rights within the context of Peru's 1933 Constitution as well as statutory laws.

In 1956 Luis Muñoz, former government prosecutor before the Supreme Tribunal of Justice of Spain, published an excellent commentary on the present Constitution of Peru.⁵⁶ Its provisions are quoted in the same sequence as in the official and original text, with commentaries following each provision. At the end of the work is an onomastic and bibliographical index.

In 1958 Dr. Guillermo Skinner undertook a less comprehensive annotation of the 1933 Constitution.⁵⁷

Two works dealing with habeas corpus, as practiced in Peru, were published by Helí Palomino Arana⁵⁸ and Ricardo Bustamante Cisneros, former chief justice of the Supreme Court of Peru.⁵⁹ The second work is actually a speech delivered by the chief justice at the 1961 formal opening of the Court. It deals with the effects of habeas corpus in reference to political rights, attacks by private persons on individual and social rights, the Peruvian Indian, and penal sanctions against violations of the fundamental rights of man.

As of this writing, the latest annotated edition of the 1933 Peruvian Constitution in the Library of Congress collections appears to be one issued by Jesús Víctor Fajardo.⁶⁰ Amendatory, complementary, and supplementary laws adopted through plebiscites, as well as laws promulgated by decrees through 1963, are appended to the work. The text of the charter is preceded by a 21-page general

⁵⁵ Morey, Robert Havens. *Peru stands for basic rights*. [Canandaigua, N.Y., Science of Man Foundation] 1954. 40 p.

⁵⁶ *La Constitución Política del Perú comentada [por] Luis Muñoz*. Lima, Ediciones Juris; Distribuidores Ruiz y Brito, 1956. 308 p.

⁵⁷ *La Constitución del Perú, 1933. Notas del Dr. Guillermo Skinner G.* [Lima] J. Mejía Baca, 1958. 48 p. (Ediciones Populares, 2.ser.)

⁵⁸ Palomino Arana, Helí. *Defensa de los derechos constitucionales; habeas corpus*. [Lima, La Habanera, 1959] 45 p.

⁵⁹ Bustamante Cisneros, Ricardo. *Habeas corpus y acción popular*. Ed. bilingüe: español-inglés. Trujillo, Perú, 1961. 55 p. (Publicaciones del Departamento de Extensión Cultural del Instituto Moderno)

⁶⁰ *La Constitución Política del Perú, sancionada por el Congreso Constituyente de 1931 y promulgada el 9 de abril de 1933. Comentada, modificada y concordada con las leyes plebiscitarias y decretos que tienen fuerza de ley; con citas bibliográficas de Miguel Antonio de la Lama [et al.] Por J. V. Fajardo*. Lima, Edit. Mercurio [1963?] 142 p.

discussion of constitutional principles and personal observations by the author.

Election Law

Suffrage legislation has undergone many changes through the various military and constitutional regimes of Peru. Invariably, with a change in government, the incoming administration creates an electoral commission to draft a new election law. If approved by a plebiscite, the new law becomes the basis for the elections of the new executive and legislative branches of government.

There are many sources, both official and unofficial, on the subject of electoral law and practice in Peru. To achieve the widest distribution possible, many publications dealing with both local and national election laws were issued in pamphlet form, either annotated or unannotated. A great many of these individually published decrees, laws, drafts of laws, and regulations, especially the earlier ones, may also be found in a number of compilations and annotated works. Items published from 1825 to 1933,¹ consisting principally of textual

¹ *Ley Reglamentaria de Elecciones de diputados a congreso, senadores y diputados departamentales, y de los individuos de las municipalidades, sancionada por el Congreso Constituyente conforme a la Constitución Política de la República Peruana.* [Lima, Impr. del Estado por J. González, 1825] 20, 8 p.

Ley Reglamentaria de Elecciones. Lima, Impr. de Eusebio Aranda, 1840. 22 p.

Ley de Elecciones de 22 de diciembre de 1849. Lima, Impr. de Eusebio Aranda [1849] 16 p.

Ley de Elecciones sancionada por la Legislatura Ordinaria de 1892. Ed. oficial. Lima, Impr. del Estado, 1893. 31 p.

Ley Electoral dada por la Legislatura Extraordinaria de 1896. Ed. oficial. Lima, Impr. de Torres Aguirre, 1896. 52 p.

— *con citas, notas, concordancias y un apéndice que contiene todas las leyes, decretos, resoluciones, circulares y acuerdos de la Junta Electoral Nacional hasta el día, por Mariano Lino Cornejo.* Lima, Impr. del Estado, 1901. 108 p.

Proyecto de reforma de la ley electoral presentado por la comisión especial de la H. Cámara de Senadores. Lima, Emp. Tip. "Unión," 1914. 40 p.

Novísima Ley Electoral con su respectivo formulario. Año 1915. Lima, Impr. del "Boletín de Ciencias, Artes é Industrias" [1915] 57, 3 p.

Apaza Rodríguez, Miguel, ed. *Nueva Ley Electoral No. 2108 con su síntesis procesal, calendario y términos políticos; ejecutorias de los fallos expedidos por la Corte Suprema en los procesos electorales con sujeción a la Ley No. 2108 . . .* Lima, Impr. "El Boletín de Ciencias, Artes é Industrias, 1916. 79 p.

Anteproyecto de una ley de elecciones: exposición de motivos, votos discordantes, formaron por Resolución Ministerial de 13 de marzo de 1931 . . . Lima, Tall. de la Empr. Periodística Hnos. Faura, 1931. 52 p.

Decretos-leyes y resoluciones supremas modificatorios del estatuto electoral expedidos por la Junta Nacional de Gobierno. Ed. oficial. Lima, Libr. e Impr. Gil, S.A., 1931. 64 p.

Estatuto Electoral y Reglamento para su aplicación expedidos por la Junta Nacional de Gobierno el 26 de mayo de 1931 y el 8 de junio de 1931. Ed. oficial. Lima, Libr. e Impr. Gil, S.A., 1931. 98 p.

Ley de Elecciones dada por el Congreso Constituyente el 28 de abril de 1933; objetada por el actual gobierno, en mayo próximo pasado y cuya promulgación se hace con las modificaciones que contempla la Ley de 26 de julio último. 8 de agosto de 1933. Lima, Libr. e Impr. Gil, S.A., 1933. 29 p.

material, are listed below as footnotes without any comments. However, more recent publications which also simply contain textual material will be described in this subsection.

A law school thesis on the subject of electoral law was written by José Félix Aramburú, in partial fulfillment of requirements for a doctoral degree. The work is not limited to Peruvian practice or legislation; some parts are general and comparative in nature, but the greater part of the work refers to domestic legal problems.²

Excerpts from the legislative debates and speeches on suffrage and the provisions for national and municipal election laws, particularly the law of 1908, were annotated in a compilation published in two editions by J. M. Manzanilla.³

All provisions of law in force in 1936 on the subject of electoral matters were collected and correlated in one text.⁴ Marginal notes indicate where the Electoral Statute of April 29, 1936, had repealed or modified, either expressly or tacitly, the provisions of former laws and decrees. This work is complemented by another⁵ which gives the official text of the 1931 Electoral Statute as modified by various subsequent measures up to 1936. A similar but unofficial work contains all regulatory and implementary laws promulgated up to 1939.⁶

The 1936 Electoral Statute and its antecedents are also the subject of another compilation⁷ in which new provisions or clauses are printed in italics. The text of the Constitution of 1933 is also included. These same pieces of electoral legislation may also be found in a handbook with pertinent notes and a good subject index by Dr. Alberto Arca Parró.⁸

The National Electoral Board published a compilation of election laws in

² Aramburú, José Félix. *Derecho electoral, antecedentes históricos y aplicaciones a la nueva ley*. [Lima, Ofic. Tip. de la Opinión Nacional] 1915. 146 p.

³ Manzanilla, J. M. *Elecciones nacionales y municipales. Discursos parlamentarios*. [1.ed. ?] 2.ed. [Lima] Impr. A. J. Rivas Berrio, 1931. 164 p.

⁴ *Recopilación de leyes de elecciones para presidente de la república, 1° y 2° vicepresidente, senadores y diputados*. Lima, La Prensa, 1936. 107 p.

———. Lima, Emp. Periodística, S.A., 1936. 109 p.

⁵ *Estatuto Electoral (Ley 7177) concordado con las Leyes 7287, 7780 y 8252, por el oficial mayor del Congreso Constituyente*. Lima, La Nacional [1936] 140 p.

⁶ *Estatuto Electoral y Reglamento conforme a las leyes expedidas para su aplicación . . .* Lima, Libr. é Impr. Gil, S.A., 1939. 101 p.

⁷ *Leyes electorales del Perú y Constitución del Estado*. Lima, San Martí y Cía., 1936. 179 p. (Jurado Nacional de Elecciones)

⁸ Arca Parró, Alberto. *Manual de legislación electoral del Perú (elecciones políticas de 1936)* Lima, Impr. Torres Aguirre, 1936. 97 p.

force as of 1936,⁹ which was updated in 1939¹⁰ and again in 1945.¹¹ After another electoral law¹² was promulgated on December 15, 1945, a new compilation was issued by the board.¹³

In 1947 Mario A. Puga published a small annotated pamphlet devoted exclusively to local election laws.¹⁴

Two years later, an official publication came out incorporating a new electoral statute, Decree-Law 11172¹⁵ of September 30, 1949. In 1950 another official publication by the National Electoral Board¹⁶ included the implementary and amendatory decree-laws to the 1949 statute. Much later, a private publishing firm printed an elector's manual¹⁷ reproducing the aforesaid laws, together with the text of the Constitution, pertinent penal code provisions, and the platforms of Peru's political parties which at the time numbered 11.

An interesting monographic work by César Francisco Macera and Alfonso de Souza Ferreira¹⁸ involves the electoral process of 1956, which was conducted in accordance with the aforementioned 1949 law. Basically a political and historical study, it provides facts and figures on the national elections which brought forth the constitutional regime of 1956-62.

A similar but more comprehensive work published in 1963 by a group of jurists¹⁹ constitutes, in the words of its authors, "conclusive proof of the 1962 electoral frauds which justified the military intervention." That year's presidential election results were declared null and void. This election, like the one of 1956,

⁹ *Legislación electoral vigente en la República del Perú*. Ed. oficial. Lima, 1936. 176 p. (Jurado Nacional de Elecciones)

¹⁰ *Legislación electoral del Perú*. Lima, Impr. Torres Aguirre, 1939. 140 p. (Jurado Nacional de Elecciones)

¹¹ ———. Lima, Impr. Torres Aguirre, 1945. 144 p. (Jurado Nacional de Elecciones)

¹² Ley No. 10316 se convoca a elecciones complementarias. In *El Peruano*, no. 1533, Jan. 24, 1946.

¹³ *Legislación electoral del Perú. Leyes y decretos referentes al proceso electoral complementario de 1946*. Lima, Impr. Torres Aguirre, 1946. 20 p. (Jurado Nacional de Elecciones)

¹⁴ *Ley de Elecciones Municipales y Reglamento*. [Textos comentados y concordados por Mario A. Puga I. Chiclayo, Edit. Colonida, 1947] 72 p.

¹⁵ *El Peruano*, Nov. 2, 1949.

¹⁶ *Estatuto Electoral*. Lima, Impr. de la Dirección General de la Guardia Civil y Policía, 1949. 89 p.

¹⁷ *Decreto Supremo del 4 de enero de 1950 y decretos-leyes nos. 11226, 11251, 11308, 11331 y 11332, modificatorios del Estatuto Electoral*. Lima, Impr. Torres Aguirre, 1950. 36 p. (Jurado Nacional de Elecciones)

¹⁸ *Manual del Elector*. Lima, J. Mejía Baca, 1962. 264 p.

¹⁹ Macera, César Francisco, and Alfonso de Souza Ferreira H. *El proceso electoral de 1956; [computos finales y documentación oficial, por . . .]* Ed. particular. Lima [1956?] 207 p.

²⁰ *La fuerza armada y el proceso electoral de 1962*. Lima, 1963. [various pagings]

fell within the purview of the 1949 statute. As a consequence of these so-called electoral frauds, a new law on suffrage, superseding all other laws whose provisions ran counter to it, was promulgated by the military on December 5, 1962,²⁰ and subsequently implemented in the elections of June 1963.

Before the adoption of the basic 1962 law, Decree-Law 14207 of September 25, 1962,²¹ was promulgated, setting up new measures concerning the Electoral Registry, which was established pursuant to article 88 of the Constitution. This decree-law was subsequently given full force and effect under Law 15008 of April 14, 1964.²² Law 14669 on municipal elections was approved on September 24, 1963,²³ repealing previous laws on the same subject. In December 1963 the first local elections to be held in many years put into operation the recently adopted municipal election law. Three years later, Law 16152 of May 31, 1966,²⁴ among others, adopted extensive amendments to Laws 14250, 14207, and 14699. A 1967 compilation of election laws annotated by Gregorio Rueda Sánchez²⁵ mirrors these developments in the electoral process and legislation of Peru. Decree-Law 17608 of April 29, 1969,²⁶ has suspended the provisions of Law 14699, pertinent to the municipal elections which should have been held in November 1968, until a new law on municipal elections and a new organic law of municipalities are adopted. So far as can be ascertained from sources available at this time, the basic 1962 national election law has not yet been expressly suspended or repealed. If the generally established patterns of electoral legislation are followed, there might be a new national, as well as municipal, election law drafted and eventually decreed as law, before elections are held by the present military government in Peru.

²⁰ *El Peruano*, Dec. 6-10, 1962.

²¹ *El Peruano*, Sept. 27, 1962.

²² *Ibid.*, Apr. 24, 1964.

²³ *Ibid.*, Sept. 25, 1963.

²⁴ *Ibid.*, June 2, 1966.

²⁵ *Leyes electorales del Perú. Concordancia, modificatorias y ampliatorias [por] Gregorio Rueda Sánchez*. 1966-67. [Lima, Ediciones "El Perú y Sus Leyes," 1967?] 266 p.

²⁶ *Leyes y Resoluciones*, v. 16, p. 278.

Administrative Law

History and Texts

Although Peru's 1933 Constitution is still in force, as indicated in the chapter on constitutional law, full implementation of constitutional provisions and their amendatory or complementary special laws on several matters has been hindered by the 1968 transition from civilian to military rule. It should be kept in mind that following this transition, the Peruvian Congress was abolished, and as of this writing, the government continues to rule by decree.

At the present time, Peru has 24 political regional divisions, called departamentos: Amazonas, Ancash, Apurímac, Arequipa, Ayacucho, Cajamarca, Callao, Cuzco, Huancavelica, Huánuco, Ica, Junín, La Libertad, Lambayeque, Lima, Loreto, Madre de Dios, Moquegua, Pasco, Piura, Puno, San Martín, Tacna, and Tumbes. There are also five military zones created by the present military government. Each departamento consists of a number of provincias which are subdivided into distritos and finally into towns of various sizes. The departamentos are governed by prefects, the provincias by subprefects, and the distritos by governors or lieutenant governors wherever the latter are considered necessary. Administrative powers are divided into central and local systems. The city of Lima, by constitutional provision, is the national capital and the seat of the central government headed by the president of the Republic (see chapter on military law).

By introducing a decentralization of services and granting greater autonomy to the territorial divisions, the Constitution of 1933 was innovative in the administrative law field. Theoretically, municipalities have been autonomous since the first constitution, but the periods of dictatorships have interrupted this autonomy.

According to the 1933 Constitution, the President of the Republic must possess the following qualifications: he must be Peruvian by birth, a qualified voter, 35 years of age, and a resident of Peru for 10 consecutive years. Law 8237, dated April 1, 1936, amends the Constitution by providing for two vice-presiden-

tial positions to be filled by a first vice president and second vice president. They must possess the same qualifications as the president and be elected in the same manner and for the same tenure as the chief executive. The first vice president may assume the presidency in the event of a permanent or temporary vacancy in that office, as provided by articles 144–145 of the Constitution. In case of a vacancy in both the presidency and first vice presidency, the second vice president would succeed to the presidency. If none of the three top officials can fill the post, the executive powers are vested in the Council of Ministers (*infra*) until Congress elects a president to serve the unexpired terms, pursuant to constitutionally mandated procedures. These provisions are deemed suspended under prevailing conditions.

The President administers the affairs of state with the aid of his Cabinet whose heads, when meeting collectively, are referred to as the Consejo de Ministros (Council of Ministers). In the present government structure, a special agency, the Presidential Advisory Committee (*infra*), works very closely with the president, especially on legislative matters.

Before the 1968 military takeover, Cabinet members supervised 10 ministries: (1) Ministerio de Gobierno had jurisdiction over public order, individual rights, the press, elections, municipalities, police, territorial demarcations, traffic, and postal service. Local authorities were directly responsible to this department; (2) Ministerio de Justicia y Trabajo dealt with matters pertaining to the judiciary, the prison system, and labor and in addition was charged with administering Indian affairs and the civil service lists; (3–4) Ministerio de Guerra and Ministerio de Marina y Aeronáutica were responsible for administrative details relating to national defense and the armed forces; (5) Ministerio de Hacienda y Comercio handled the budget, taxation, coinage and currency matters, and administration of national property and commerce; (6) Ministerio de Relaciones y Culto managed foreign affairs and diplomatic relations, fixed boundaries, negotiated commercial and international treaties, and handled conventions, immigration, and nationalization problems; (7) Ministerio de Fomento had jurisdiction over industry, public works, communications, mining, water, and irrigation works; (8) Ministerio de Salud Pública y Asistencia Social dealt with public health, social welfare, and charities; (9) Ministerio de Educación was responsible for the national educational system, cultural centers, libraries, museums, and similar institutions; and (10) Ministerio de Agricultura was entrusted with matters involving agriculture, cattle raising, and colonization.

In 1966 the Oficina Nacional de Racionalización y Capacitación de la Administración Pública (ONRAP) published the first edition of a guide to the structure and operations of the various organs of the Peruvian government at that time.

It divides the government into three components: central government (subsector gobierno central), public administration (subsector público independiente), and local government (subsector gobiernos locales). According to the ONRAP guide, the first category consists of the three classic powers—executive, judicial, and legislative—plus electoral power, which is vested in a National Board of Elections headed by a secretary general who oversees registration of electors and voters and operation of departmental and provincial boards. The second component consists of the general public administrative entities, including public enterprises, and the third includes municipal councils. A graphic illustration of the administrative organ or office concerned follows each descriptive section.¹

Pursuant to Decree-Law 17271 of December 3, 1968, which became effective April 1, 1969,² the number of ministries was enlarged to 14. Some ministries were retained with added responsibilities, others were renamed or abolished, and still others were newly created. The reorganizational decree-law specifies that one basic objective of the present revolutionary government is achievement of “dynamism and efficiency” through a “profound restructuring” of the public administration to prevent duplication of functions or conflicts in jurisdiction. Under this law, the powers of the president of the Consejo, who is called Prime Minister, were enhanced beyond those originally established in the Constitution.

As this guide went to press, new organic laws for the different ministries were located and noted, either by addition to original footnotes or by substitution of the original. Time constraints did not permit a detailed examination of the new charters, but it appears that the basic functions of the affected ministries, as described in this chapter, have not been changed drastically.

The revamped ministries and their specific areas of responsibilities are: (1) Ministerio del Interior, apparently a substitute for the former Ministerio de Gobierno, contributes to the maintenance of public order, protects individual security and public morality, supervises the activities of national political authorities, and administers prisons and reformatories;³ (2) Ministerio de Relaciones Exteriores, the successor of the former Ministerio de Relaciones y Culto, deals with the international diplomatic relations, international organizations, and the church;⁴ (3-4-5) the three ministries, Ministerios de Guerra, Marina, y

¹ Oficina Nacional de Racionalización y Capacitación de la Administración Pública. *Guía del Gobierno Peruano*. 1966. 294 p.

² *Leyes y Reoluciones*. 1968. v. 15. p. 1088-1091.

³ Ley Orgánica del Ministerio del Interior (Decree-Law 17519 of Mar. 21, 1969) In *El Peruano*, Mar. 24, 1969.

⁴ Ley Orgánica del Ministerio de Relaciones Exteriores (Decree-Law 17520 of Mar. 21, 1969) In *El Peruano*, Mar. 24, 1969.

Aeronáutica, establish national security policies and ensure compliance thereto through their respective forces—the army, navy, and air force; (6) Ministerio de Hacienda, formerly the Ministerio de Hacienda y Comercio, directs financial, monetary, and credit policies and adopts administrative measures related to securing financial resources for public activities;⁵ (7) Ministerio de Educación supervises the direction, development, regulation, and inspection of all aspects of the educational system, and it conserves archaeological, historical, cultural, and artistic treasures of the nation, promotes sports and recreational activities, and protects intellectual property;⁶ (8) Ministerio de Salud, originally called the Ministerio de Salud Pública y Asistencia Social, copes with matters related to public health, rehabilitation, and social welfare;⁷ (9) Ministerio de Trabajo, replacing the former Ministerio de Justicia y Trabajo, formulates salary guidelines and handles labor matters in general and has jurisdiction over the organization, supervision, and inspection of labor relations, and the organization and administration of social security;⁸ (10) Ministerio de Agricultura directs, promotes, and regulates the conservation, growth, and distribution of agricultural, forest, and livestock resources;⁹ (11) Ministerio de Industria y Comercio, a new ministry, supervises and promotes industrial and commercial enterprises, including tourism, at the domestic and international levels;¹⁰ (12) Ministerio de Transportes y Comunicaciones, also a new ministry which absorbed some of the functions of the defunct Ministerio de Fomento, protects the use of waterways, roads, highways, and air space and also manages and regulates all public

⁵ Ley Orgánica del Ministerio de Hacienda (Decree-Law 17521 of Mar. 21, 1969) In *El Peruano*, Mar. 24, 1969. [Immediately before this guide went to press, it was learned that the name of this ministry was apparently changed to press, it was learned that the name of this ministry was apparently changed to the Ministerio de Economía y Hacienda, and presumably some of the functions of the former ministry were transferred to the new entity. Unfortunately, an exhaustive search of Peruvian sources has not yet uncovered the new and pertinent organic law.]

⁶ Ley Orgánica del Ministerio de Educación (Decree-Law 19602 of Nov. 7, 1972) In *El Peruano*, Nov. 9, 1972.

⁷ Ley Orgánica del Ministerio de Salud (Decree-Law 17523 of Mar. 21, 1969) In *El Peruano*, Mar. 24, 1969, as amended by Decree-Law 18822 of Apr. 1, 1971. In *El Peruano*, Apr. 2, 1971.

⁸ Nueva Ley Orgánica del Ministerio de Trabajo (Decree-Law 19040 of Nov. 23, 1971) In *El Peruano*, Nov. 24, 1971.

⁹ Ley Orgánica del Ministerio de Agricultura (Decree-Law 19608 of Nov. 21, 1972) In *El Peruano*, Nov. 22, 1972.

¹⁰ Ley Orgánica del Ministerio de Industria y Comercio (Decree-Law 17525 of Mar. 21, 1969) In *El Peruano*, Mar. 24, 1969, as amended by Decree-Law 18215 of Apr. 10, 1970. In *El Peruano*, Apr. 11, 1970.

works, transportation, telecommunications, and postal services;¹¹ (13) Ministerio de Energía y Minas, again a new entity, regulates all national mining and energy activities;¹² and lastly, (14) Ministerio de Vivienda, also recently organized, sets policies concerning housing, living conditions, urban planning, and zoning and conducts pertinent research.¹³

In late 1969 the government saw fit to split the Ministry of Agriculture (no. 10 *supra*) into two parts, one to deal with agriculture and the other with fisheries.¹⁴ This division increased the total number of ministries to 15. The creation of this latest ministry was prompted by the growing significance of the country's fishing and fishmeal industries and quite conceivably by the extension of Peruvian territorial waters to 200 miles.

Each ministry, including all its divisions and subordinate offices, is controlled and managed by an executive director who, as the highest career official in the ministry, is directly responsible to the corresponding Cabinet minister. Under both the civilian and military administrations, internal laws have regulated each ministry. These laws set forth all administrative details, including the extent of ministry jurisdiction, its organization, and functions of its various divisions and offices.

In addition to the ministries, the Peruvian government machinery includes a host of agencies of a special technical character. In the present military regime, these auxiliary and advisory agencies, which are directly subordinate to the presidency, include: el Consejo Nacional de Desarrollo Económico y Social (the National Council of Economic and Social Development), el Instituto Nacional de Planificación (the National Institute of Planning), el Consejo de Defensa Nacional (National Defense Council), el Servicio de Inteligencia Nacional which furnishes intelligence data assessing state security to the National Security Council, el Consejo Nacional de Investigación which determines national scientific and technical development needs, and el Comité de Asesoramiento de la Presidencia de la República (Presidential Advisory Committee).¹⁵ The texts of

¹¹ Ley Orgánica del Ministerio de Transportes y Comunicaciones (Decree-Law 17526 of Mar. 21, 1969) In *Leyes y Resoluciones*. 1969. v. 16, p. 223.

¹² Ley Orgánica del Ministerio de Energía y Minas (Decree-Law 17527 of Mar. 21, 1969) In *Leyes y Resoluciones*. 1969. v. 16. p. 228. as amended by Decree-Law 18971 of Sept. 23, 1971. In *El Peruano*. Sept. 24, 1971.

¹³ Ley Orgánica del Ministerio de Vivienda (Decree-Law 17528 of Mar. 25, 1969) In *Leyes y Resoluciones*. 1969. v. 16, p. 238.

¹⁴ Ley Orgánica del Ministerio de Pesquería (Decree-Law 18121 of Jan. 27, 1970) In *El Peruano*, Jan. 30, 1970.

¹⁵ Ley Orgánica de la Presidencia de la República (Decree-Law 17532 of Mar. 25, 1969) In *Leyes y Resoluciones*. 1969. v. 16, p. 238.

the organic laws for the presidency and the ministries (*supra*) may be found in official and unofficial compilations, both annotated and unannotated.¹⁶

The legislative power of the central government, under the terms of the Constitution, has been partially treated in the preceding chapter. The judicial power is described fully in a separate chapter of this work.

Literature

Dr. Manuel A. Fuentes produced two editions of his text on administrative law¹ in which he discusses a variety of subjects, including administrative power, executive power, the government's rights to property, local administration, judicial autonomy, public works, revenue collection, and other related matters. The second edition was written after the visiting French authority Dr. Paul Louis Ernest Pradier-Fodéré recommended its use in a course he was instructing at San Marcos University. Dr. Fuentes also translated from the French Dr. Pradier-Fodéré's lectures² which were delivered in 1878 at the political science department of San Marcos University.

A treatise on public law appeared 20 years later authored by another professor of administrative science, Dr. Federico León y León,³ at the same university. This study contains comparative notes on the system of government in the United States.

A collection of legislation in this particular field was published in 1907 by its compiler, Ricardo R. Ríos.⁴ The Constitution of 1860, which was in force at that time, is included in this compilation, as well as the existing electoral laws, laws regulating the various Cabinet offices, and other legislation relating to public officials and employees, taxation, and the law of habeas corpus. An index-digest of the contents of these laws is included in the second part of the work.

¹⁶ *Compendio de leyes orgánicas de la Presidencia de la República y sectores de actividad pública*. [Lima] Instituto Nacional de Planificación, Area de Reforma de la Administración Pública [1969] 111 p. (Cuadernillos de Divulgación)

Nuevas leyes ministeriales del Gobierno Revolucionaria del Perú. Arequipa, Impr. Edit. El Sol, 1969. 210 p.

Reforma de la administración pública (leyes orgánicas, sus ampliatorias y modificatorias) Lima, Ediciones "EDESAL," 1969- v. 1 (Series legislativas. C: leyes orgánicas)

¹ Fuentes, Manuel A. *Compendio del derecho administrativo*. Paris, Libr. de Rosa y Bouret, 1865. 266 p.: 2.ed. 1875. 396 p.

² Pradier-Fodéré, Paul Louis Ernest. *Compendio del curso de derecho administrativo profesado en la Facultad de Ciencias Políticas y Administrativas de Lima*. Tr. por Manuel A. Fuentes. Lima, Impr. del Estado, 1878. 490 p.

³ León y León, Federico. *Tratado de derecho administrativo*. Lima, E. Moreno, 1897. 2 v. in 1.

⁴ Ríos, Ricardo R. *Legislación administrativa y manual de funcionarios pública*. Lima, Impr. E. Moreno, 1907. 974 p.

Although the collection by Ríos was originally intended to be a multivolume series, no subsequent volumes appeared.

An excellent contribution in English was made by Dr. Graham H. Stuart, a professor at Stanford University.⁵ Although his work is based on the Constitution of 1920 and on the special laws enacted before those in force at the time, some of the legislation discussed still forms the basic laws of the governmental departments and of the departmental and municipal subdivisions. Government organization is traced from 1821 to 1925 through the provisions of the constitutions adopted during that period. Dr. Stuart includes in his work the text of the 1920 Constitution and an excellent bibliography at the end of the volume and draws interesting conclusions from his study and research.

Worthy of inclusion in this chapter is the survey covering 100 years of Peruvian administration, written by Dr. Pedro Dávalos y Lissón.⁶ Although comprehensive in scope, the survey does not emphasize legal aspects of the subject. Instead, it presents a general description of each governmental branch, followed by chapters dealing with such special fields as financial law, customs law, agriculture, communications, and public health. The last two volumes examine the administration of several Peruvian presidents, beginning with that of Simón Bolívar.

Another contribution to the field was made by Dr. Toribio Alayza y Paz Soldán⁷ who wrote a textbook for his university course on administrative law. The text treats of this legal area in general terms but also contains specific references to Peru. Up to that time the only other work of this nature was that done by Dr. León y León in 1897, which needed updating.

Cuzco's representative to the Constituent Congress of 1931, Dr. Manuel Jesús Gamarra,⁸ compiled and published his opinions on and contributions to the discussion in the Congress on administrative organization and decentralization of services. The author defends two draft laws he introduced at this session.

A comprehensive compilation of laws, regulations, forms for use in official correspondence, and documents of all kinds, as well as other pertinent data of importance to public officials and employees, was the result of the careful research of Dr. Ramón Costa y Caverro.⁹ This work proved useful to individuals

⁵ Stuart, Graham H. *The governmental system of Peru*. Washington, D.C., Carnegie Institute of Washington, 1925. 156 p.

⁶ Dávalos y Lissón, Pedro. *La Primera Centuria*. Lima, Libr. e Impr. Gil, 1919-26. 4 v.

⁷ Alayza y Paz Soldán, Toribio. *Derecho administrativo general y del Perú*. Lima, Sanmartí y Cía., 1927. 234 p.

⁸ Gamarra, Manuel Jesús. *Gobierno Departamental*. [Lima] Impr. de la Escuela de la Guardia Civil y Policía, 1934. 322 p.

⁹ Costa y Caverro, Ramón. *Manual administrativo para uso de los funcionarios y empleados de las oficinas públicas* . . . Fascículo 1-3. Lima, Ofic. Tip. La Equitativa, 1933-35. 3 v.; 2.ed. 1940- 1 v. (Biblioteca de obras administrativas)

in frequent contact with government departments and agencies. Dr. Costa y Caverio is also author of an annotated compilation of special laws on retirement and pensions of employees of the national government, the municipalities, and the semiofficial corporations.¹⁰ Various correspondence forms are included when applicable. His collection of legislation on water, agriculture, and land forms part of his Biblioteca de Obras Administrativas series.¹¹

With the assistance of Dr. F. Santa Cruz Medina, Dr. Costa y Caverio also compiled an annotated collection of laws on civil service and old-age pensions for teachers and government employees.¹²

In 1934 Mariano Peña Prado published an essay¹³ on national sovereignty which touches on such issues as national dominion over land, water, air space, public utilities, mining, and communications. He presents his ideas in general terms but devotes approximately half of his work to the Peruvian practice.

Two works were added to the legal literature in this field by Alberto Rodríguez Ramírez Carpi. The first restricts its subject matter to the financial and economic aspects of government operations,¹⁴ and the second highlights constitutional and public law aspects.¹⁵ Diagrams are included showing the internal organization of the various Cabinet departments.

As a student of San Marcos University, Luis Quiñe Arista edited a handbook of Peruvian administrative legislation in 1938.¹⁶ Financial difficulties, however, prevented its publication until the following year. A preface by Professor Alayza y Paz Soldán praises the completeness and scholarliness of the work.

An associate justice of the Supreme Court, Dr. Felipe S. Portocarrero, began teaching courses in administrative law and procedure at the Catholic University in 1941. The lack of adequate textbooks in this field motivated him to write some for his own students. In 1943 he published a work on procedure in admin-

¹⁰ ———. *Goces de jubilación, cesantía y montepío de los empleados públicos y de los de las municipalidades* . . . [1.ed. ?] 2.ed. Lima, Tip. La Equitativa, 1936. 91 p. (Biblioteca de obras administrativas)

¹¹ ———. *Legislación de aguas, agricultura y ganadería*. Lima, Ofic. Tip. La Equitativa, 1935-36. 2 v.

¹² Costa y Caverio, Ramón, and F. Santa Cruz Medina. *Manual de legislación del magisterio nacional del empleado público, anotado y concordado*. Lima, Impr. Americana, 1944.

¹³ Peña Prado, Mariano. *El dominio del estado en el Perú*. [Lima, Edit. Minerva, 1934] 60 p.

¹⁴ Rodríguez Ramírez Carpi, Alberto. *Derecho administrativo peruano en materia de finanzas y presupuesto*. Lima, 1935.

¹⁵ ———. *La administración peruana a la luz del derecho público*. Lima [El Universal, 1938] 124 p.

¹⁶ Quiñe Arista, Luis. *Derecho administrativo del Perú*. Lima, Tall. de la Empr. Edit. Peruana, S. A., 1939. 218 p.

istrative cases,¹⁷ particularly as applied in Peru. His study includes chapters on procedures in expropriation suits; copyright, patent, and trademark registration; tax evasion cases; cases on malfeasance by public officials; procedure for nationalization, and other topics. In the following year his text on the administrative law proper appeared.¹⁸ It treats of the government system as developed in Peru and its present status. He devotes chapters to each ministry and its subdivisions and also to local departmental and municipal organization and administration.

Justice Portocarrero was commissioned to present to his government a draft civil service statute to regulate government officials and employees. This was officially published under the authorization of a supreme resolution dated April 11, 1945. A "statement of purposes" accompanied the draft.¹⁹ Before this time, only laws relating to such special branches as the judiciary, the diplomatic corps, and the armed services had been adopted.

A collection of materials dealing particularly with the provisions of the Constitution, codes, and statutory enactments concerning government officials and employees was issued by Dr. Pedro Patrón Faura in the early forties while he was still a law student at San Marcos University.²⁰ His sustained interest in the subject motivated him to revise and expand his first published work to include what subsequently became the Civil Service Statute, as well as other administrative laws, decrees, and resolutions. This collection has since become the most comprehensive compilation of civil service legislation in Peru and has gone through several editions. The latest edition covers 150 years of legislation, with the author's comments and advisory opinions on administrative practice and rulings. The work was awarded a government gold medal prize. He also edited a paper on the 1944 proceedings of the Colegio de Abogados de Lima relating to the same subject.²¹ Another publication by Patrón Faura, which examined

¹⁷ Portocarrero, Felipe S. *Derecho Procesal Administrativo*. Lima, Escuela Tip. Salesiana, 1943. 110 p.

¹⁸ ———. *Curso de derecho administrativo del Perú*. Lima, Escuela Tip. Salesiana, 1944. 231 p.

¹⁹ ———. *Estatuto administrativo del funcionario y empleado público; proyecto de ley con su exposición de motivos*. Lima, Escuela Tip. Salesiana, 1945. 38 p.

———. *Proyecto y exposición de motivos del código de procedimientos administrativos*. Lima, Escuela Tip. Salesiana, 1945. 130 p.

²⁰ Patrón Faura, Pedro. *Legislación peruana sobre empleados públicos; leyes, decretos y resoluciones vigentes sobre funcionarios y empleados públicos y disposiciones de la Constitución y los códigos relacionadas con todas las actividades de los servidores civiles del estado, clasificado por materias y en orden cronológico . . .* Lima [Tall. de Linotipia] 1943. 216 p.; 2.ed. 1946. 414 p.; 3.ed. (?) 4.ed. 1952. 682 p.; 5.ed. 1959. 422 p.; 6.ed. 1964. 456 p.; 7.ed. 1966. 692 p. [Printer varies]

²¹ ———. *Garantías y obligaciones de los empleados públicos; conferencia sustentada en el Colegio de Abogados de Lima, el 24 de noviembre . . .* Lima, Tall. de Linotipia, 1944. 24 p.

the legal status of women in both public and private employment,²² was apparently inspired by his celebrated work on civil service legislation.

Other works on the same topic, but with less extensive coverage, were edited and published by Juan Manuel del Mar,²³ Gregorio Rueda Sánchez,²⁴ Silviano Martínez G.,²⁵ Jesús Víctor Fajardo,²⁶ and José Lazo Amorós.²⁷ The first two deal primarily with the text of the Civil Service Statute, and the last three cover a wider variety of materials on public administration and public employees.

A scholarly work by Dr. Humberto Núñez Borja, an erudite professor of administrative law at the Universidad Nacional del Gran Padre San Agustín de Arequipa, provides "lessons" on the science of administration and administrative law.²⁸ The book points out the distinction between administration and law and discusses the need for well-defined civil service protection for public servants. It is an excellent historical and analytical exposition on public administration in general and Peruvian rules and practices in particular. Another work by Dr. Núñez involves the drafts of organic laws for municipalities which he compiled and edited in his capacity as director of the Seminario de Derecho Municipal of the Faculty of Law of the Universidad Nacional de San Agustín.

Another textbook on administrative law is by Dr. Fernando Tola, a professor who taught this subject at San Marcos University. He makes specific references to Peruvian practice and organization, but for the most part, the work deals with general principles of administrative law.²⁹ This first volume was to initiate

²² ———. *Legislación de la mujer peruana, prontuario; normas contenidas en la Constitución, en los códigos y en otras disposiciones relacionadas con la mujer, en general, y en especial con las madres de familia y las empleadas y obreras al servicio del estado y de empresas particulares*. [Lima] 1947. 124 p.; another ed. 1955. 171 p.

²³ Mar, Juan Manuel del, ed. *Estatuto y escalafón del servicio civil; derechos y obligaciones de los empleados públicos de carrera, contratados, adscritos y personal del servicio interno . . .* [Lima, Distribuidores Exclusivos: Libr. "Las Américas," 1950] 55 p.

²⁴ Rueda Sánchez, Gregorio, ed. *Legislación del empleado público; concordancias y modificaciones*. Lima [1965] 206 p.

²⁵ Martínez G., Silviano, ed. *Estatuto y escalafón del servicio civil. Reglamento y legislación conexas sobre cesantía, jubilación, montepío, asignaciones, bonificaciones, etc.* Lima [Ediciones Martínez de Legislación] 1965. 199 p.

²⁶ Fajardo, Jesús Víctor, ed. *Legislación peruana sobre empleados públicos y particulares, con el texto íntegro del estatuto y escalafón del servicio civil y su reglamento*. Lima, Edit. Mercurio [196-] 314 p.

²⁷ Lazo Amorós, José. *Manual y análisis de los deberes y derechos de los servidores públicos*. [1.ed. ?] 2.ed. [Corr. y aum. Lima, 1968] 635 p.

²⁸ Núñez Borja, Humberto. *Lecciones de ciencia de la administración y derecho administrativo peruano*. Arequipa, Establecimientos Gráficos La Colmena, S.A., 1945- ; 2.ed. [Lima, Imp. "El Condor"] 1959. 463 p.

———. *Anteproyectos de la ley orgánica de municipalidades y la institución municipal en el Perú*. [Lima, Imp. "El Condor," 1967?] 558 p.

²⁹ Tola, Fernando. *Derecho administrativo del Perú . . .* Lima [Tall. de Linotipia] 1945-298 p.

a series of works. So far as can be determined, however, this series never materialized beyond the first work.

Legislation enacted over a period of years relating to the government's monopoly of the guano industry, an important and critical element in the Peruvian economy, is the subject of an annotated compilation edited by Dr. Rómulo E. Lanatta.³⁰

In 1946 the Office of Statistics of the Ministry of Treasury and Commerce issued a compilation by Justino M. Tarazona S.,³¹ containing a historical survey of the political subdivisions from the time the nation became a republic in 1823, followed by the texts of pertinent decrees and laws. Recently, this compilation has been enlarged into a two-volume work.

In 1950 Ernesto A. Velarde Morán produced an interesting geographic and industrial index on Peru.³² The work details the political subdivisions of the country (*supra*) and provides pertinent data on population density of different zones and their physical and industrial conditions, past and present, supported by statistics and corresponding legislation.

Three disparate works in this field appeared during a two-year period, two in 1959 and a third the following year. The first, by Angel Eduardo Valdivia R., is an annotated compilation of civil service legislation which follows the same format as those previously described, with the exception that this one deals solely with the legal status of teachers, their rights and obligations.³³ The second, by Luis Alberto Sánchez, focuses on modern educational standards which have influenced new legislation that reorganizes Peruvian universities. Critical journalistic and professional commentaries are given by the author, in addition to the text of the law.³⁴ The third work, by Sócrates Vento, expounds the feasibility and desirability of establishing a federal state in Peru. The author presents the history on decentralization tendencies and a definition of a federal state and describes how one could be established in Peru.³⁵

³⁰ Lanatta, Rómulo E., ed. *Legislación fiscal del guano, recopilado y anotado*. Lima, Compañía Administradora del Guano, 1936. 211 p.; 2.ed. 1944. 315 p. [Title varies]

³¹ Tarazona S., Justino M., comp. *Demarcación política del Perú; recopilación de leyes y decretos (1821-1946)*. Lima [Tall. de Linotipia] 1946. 1545 p.; 2.ed. 1968. 2 v.

³² Velarde Morán, Ernesto A. *Índice geográfico e industrial de los pueblos del Perú, con los últimos decretos sobre legislación industrial*. Lima, 1950. 281 p.

³³ Valdivia R., Angel Eduardo, ed. *Legislación magisterial peruana; goce y derechos de los maestros del servicio oficial y particular*. Lima, 1959. 372 p.

³⁴ Sánchez, Luis Alberto. *Sobre la reforma universitaria; con un apéndice de la ley No. 10555*. Lima, Asociación Peruana por la Libertad de la Cultura, 1959. 74 p. (Política y Polémica, 1)

³⁵ Vento, Sócrates. *Hacia el estado federal peruano; fundamentos*. Lima, Edit. Médica Peruana, 1960 ? 69 p.

Ernesto Sandoval Cerna,³⁶ Luis Dongo Denegri,³⁷ and Francisco Flores Bao³⁸ edited and published in 1953, 1962, and 1967, respectively, individual works on the laws, regulations, and decrees involving urban renewal, zoning, expropriation, and government financing for housing and acquisition of land titles for government employees and the rest of the population. All three indicate that the Corporación Nacional de la Vivienda (National Housing Corporation), an autonomous agency established in Lima by law, is the key administrative arm of the government entrusted with improving "hygienically, technically, economically, and socially" the living conditions throughout the country.

In 1968 several congressmen cosponsored a bill to regulate the government's business enterprises. The full text of the draft³⁹ was published the same year; it cannot yet be ascertained, however, from available sources whether or not the bill finally became law.

The following year an annotated work on the National Industrial Incentives Law⁴⁰ was published by the Industrial Bank of Peru to serve as a readily accessible pamphlet for its interested clientele. For easy reference, the law and its additional regulations are printed on pages of pink and aqua, respectively.

Under a grant from the Manuel J. Bustamante de la Fuente Foundation, Dr. Gustavo Bacacorzo wrote a treatise on pensions.⁴¹ The author draws heavily from doctrinal, legislative, and judicial sources and also from his experience as former legal counsel of the no longer existent Ministerio de Fomento y Obras Públicas, which included a subordinate office directly responsible for federal employee pensions and retirement benefits. This treatise can be highly recommended to university professors, those involved in administrative and labor matters, public functionaries, lawyers, and law students.

³⁶ Sandoval Cerna, Ernesto, ed. *Compilación de disposiciones legales y reglamentarias sobre urbanizaciones, 1900-1953, con inclusión del Nuevo Reglamento de Construcciones para Lima y Balnearios, autorizada oficialmente por R.M. 57 de 21 de febrero de 1953*. Lima, 1953. 434 p.

³⁷ Dongo Denegri, Luis, ed. *Vivienda y urbanismo; recopilación y concordancias de las disposiciones sobre construcción de casas para obreros y empleados, Estatuto de la Corporación Nacional de la Vivienda, asociaciones mutuales de crédito para vivienda, cooperativas, barrios marginales, Instituto de la Vivienda, Oficina Nacional de Planeamiento y Urbanismo, Reglamento de Urbanizaciones y Subdivisión de Tierras*. Arequipa, 1962. 240 p.

³⁸ Flores Bao, Francisco, comp. *Urbanismo y vivienda [recopilación de las disposiciones legales vigentes]* [Lima] 1967.

³⁹ Cubas Vinatea, Rafael, and others, comps. *Proyecto de ley de empresas comunitarias, presentado en la Cámara de Diputados del Perú*. Lima, 1968. 79 p.

⁴⁰ Banco Industrial del Perú, División de Promoción Industrial. *Perú: promoción industrial; cuadros comparativos de beneficios para la industria manufacturera*. [Lima, 1969 ?] 51 p.

⁴¹ Bacacorzo, Gustavo. *Derecho de pensiones del Perú; doctrina, legislación, jurisprudencia, comentario*. Arequipa, Fundación Manuel J. Bustamante de la Fuente, 1969- 1 v.

Indians

Recent news reports have generated a new and intense public awareness of the plight of the American Indian. The Indian problem is not unique to the United States, however, where the Indians constitute a minority of the total population. It, in fact, pervades the Latin nations where, in some cases, the Indians represent a majority of the populace. In Peru individuals of pure Indian stock make up one-third of the population, and another 50 percent are of mixed Indian heritage. These facts require a special section in this guide to describe the Peruvian Indian vis-à-vis administrative law.

Chroniclers of the Empire of Tahuantinsuyo, as the ancient Inca confederation of Peru was called, have long debated the extent of the empire, its culture and civilization. The romanticists among them tend to glorify its traditions, laws, and institutions, and the pragmatists tend to disparage them. This work, tracing only the modern development of Peru and the role of the Indian therein, will not discuss the empire's cultural past.

Perhaps no other country in Latin America has been more preoccupied with the Indian problem than Peru. Its politics have always kept the issue alive. Land reform programs invariably revolved around the Indian peasants. (See section on land laws and agrarian reform.) Harking back to the days of Peru's esteemed Protector, General San Martín, legal historians and law compilers show that one of the first proclamations to be issued by the Protector involved the emancipation of the Indian and his assimilation into Peruvian citizenry. Government concern and consciousness eventually led to the creation of a special Office of Indian Affairs with functions and responsibilities presumably similar to those of the Bureau of Indian Affairs within the U.S. Department of Interior.

This Indian office was a dependency of the former Ministerio de Fomento. In the administrative reorganization that followed the 1968 military coup, it was made part of the Ministry of Labor under Decree-Law 17524 of March 21, 1969, the ministry's original charter. It appears, however, that the functions of this special office were absorbed in 1971 by the Sistema Nacional de Apoyo a la Movilización Social (National System of Support for Social Mobilization), more popularly known as SINAMOS. Apparently, this new agency was established on the theory of absolute equality of all Peruvians. According to the decree-law which created it,¹ SINAMOS is designed to achieve the conscientious and active participation of the national population (i.e., everyone regardless of race or color) in the economic and social development of the country. Integrated into

¹ Decree-Law 18896 of June 22, 1971. In *El Peruano*, June 24, 1971.

the agency are a number of government offices or bureaus. Accorded a cabinet status, SINAMOS is meant to serve as a type of national clearinghouse, coordinating both public and private undertakings of "social interest" on either the national or local level.

Despite contemporary legal advances, the Indian has remained the center of political issues and controversies. The March 27, 1972, issue of *El Peruano* featured an editorial regarding sweeping reforms adopted under the new General Law on Education, Decree-Law 19326 of March 21, 1972. One of the basic innovations of this law is the requirement that "the poor who have lived for so long outside the cultural stream" (i.e., the Indians) be taught in their native language, such as Quechua or Aymara, as well as in Spanish. The law aims to eliminate the present inadequate educational system and to restructure Peruvian society. If the law proves to be as effective as envisioned, it should greatly improve the situation of the Indian.

The Library of Congress' materials relating to the Peruvian Indian are extensive. However, only those materials which deal with the legal aspects of the problem will be included in this commentary.

To begin with, the reader's attention is called to a special list of early works,² for the most part law school theses with one or two monographic works, all dealing in a general way with the civil rights of the Indian, his lands or communities. They provide informative background reading on past and present-day treatment of the Indian question.

Magdaleno Chira C., chief of the Section on Indian Affairs of the Ministerio de Fomento during the constitutional presidency of Luis M. Sánchez Cerro from 1931 to 1933, prepared what he called *Observations and Basic Recommenda-*

² Tudela y Varela, Antonio. *Socialismo Peruano*. Lima, Impr. La Industria, 1905. 34 p.

Loayza, Florencia. *Condición legal de las comunidades indígenas*. Lima, Tip. Cáceres, 1911. 25 p. [Doctoral thesis]

Escobar, Julio. *La condición civil del indio*. Lima, 1925. [Thesis]

Delgado A., M. Julio. *Origen de la propiedad rural en la sierra*. [Lima] Facultad de Derecho de la Univ. Mayor de San Marcos de Lima, 1930. 69 p.

Barrio, César. *Contribución al esclarecimiento y solución del problema indígena en su aspecto jurídico*. Lima, 1935. [Thesis]

Fernández Álvarez, E. *Comunidades de indígenas en el Perú*. Lima, 1938. [Thesis]

Molina Flores, Emilio. *Régimen legal de las comunidades indígenas; y reglamentación de los Ayllus de Puno*. Lima, 1938. [Thesis]

Chávez León, Fernando Luis. *Las comunidades de indígenas y el Código Civil de 1936*. Lima, 1939. [Thesis]

Vecorena, R. *La capacidad jurídica del indígena peruano*. Lima, 1939. [Thesis]

Vega Centeno, Emilio. *Estudio comparativo de los diferentes proyectos de legislación indígena*. Lima, 1939. [Thesis]

Belaúnde Guinassi, Manuel. *La encomienda en el Perú*. Lima, Ediciones Mercurio Peruano (194-) 253 p.

tions of Indian Legislation . . . ,³ for submission to a parliamentary commission of the Constituent Assembly. The paper analyzes the early Indian legislation and discusses, among other matters, the Indian's education and juridical capacity with reference to contracts, property ownership, etc., and suggests either a modification of a given law or its total revocation. Full text of the pertinent laws are contained in appendixes to the work.

Because the government agency dealing with Indian affairs underwent several changes in name and administrative structure, official publications issued by this office are found under a variety of headings. Three such official publications were located for 1935,⁴ 1938,⁵ and 1948⁶ covering the full texts or excerpts of all Indian legislation as of those years. The 1938 work includes, in addition to legislation, a statistical census list of Indian communities in the different departamentos which were officially recognized and registered with the government up to May 31, 1938.

An interesting pamphlet published by C. A. Ricketts,⁷ a Peruvian congressman, in the early thirties shows drafts of laws that he had sponsored which aim at curbing alcoholism and coca addiction among the Indians and establishing the native Quechua language as the medium of instruction for Indians in grade school.

Two of three works concerning the Peruvian Indians⁸ written by José Varallanos fall within the scope of this guide. One covers all legal developments between 1900 and 1947, as reflected in the 1919 and 1931 Constitutions, the 1936 Civil Code, the 1924 Penal Code, the Law of Waters of 1902, and related jurisprudence and administrative resolutions. The other, although relat-

³ Chira C., Magdaleno. *Observaciones e indicaciones básicas de legislación indígena elevadas a la Comisión Parlamentaria respectiva de la honorable Asamblea Constituyente de 1931*. Lima, Impr. Hispano-America, 1932. 195 p.

⁴ Ministerio de Fomento. Dirección General del ramo. *Recopilación de leyes, decretos y resoluciones que se relacionan con la raza indígena, y recomendaciones para la organización de expedientes de reconocimiento e inscripción oficial y de levantamiento de planos de conjunto de las tierras de las comunidades de indígenas*. [Lima] Sección de Asuntos Indígenas, 1935. 39 p.

⁵ Dirección de Asuntos Indígenas. *Boletín*. Lima, Impr. y Libr. del Gabinete Militar, 1938. 90 p.

⁶ Dirección General de Asuntos Indígenas. *Legislación indigenista del Perú*. Lima, Tall. Gráficos de la Penitenciaría Central, 1948. 319 p.

⁷ Ricketts, C. A. *Ensayos de legislación pro-indígena*. Arequipa, Tip. Cuadros, 1936. 62 p.

⁸ Varallanos, José, comp. *Legislación indiana republicana; compilación de leyes, decretos, jurisprudencia judicial, administrativa y demás vigentes sobre el indígena y sus comunidades; índices numérico, alfabético; notas y estudio crítico en que se sugiere la creación juzgados de asuntos indígenas*. Lima, 1947. 142 p.

———. *El derecho indiano a través de Nueva crónica y su influencia en la vida social peruana*. Lima, Suma, 1946. 185 p.

ing to pre-Hispanic laws, merits inclusion nonetheless because the author relates these laws to the "new order" and attempts to show their influence on the modern state of Peru.

Atilio Sivirichi, the distinguished Peruvian historian, produced a very extensive and highly praised work,⁹ which presents the elements of the Indian problem. Developments in the legal field are provided with respect to both the Indian in the Americas in general and the Peruvian Indian in particular. The author examines the need for a codified body of Indian laws covering civil, commercial, criminal, social, educational, and administrative matters. The draft of such a code, accompanied by a statement of purposes for each of the subjects covered, concludes the work.

In the late forties, Francisco Javier Ponce de León Pacheco presented a paper before the legal section of the Second Inter-American Conference on Indian Life, meeting in Cuzco. It provides an interesting insight into the juridical status of the Indian under the criminal laws prevailing at the time.¹⁰

In a 1951, pocket-sized pamphlet, Leonor Breña Pacheco and Nelson Cáceres treat the subject of *yanaconaje*, a landlord-tenant relationship or *métayer* system of agricultural production with Indian labor.¹¹

An annotated work by Manuel D. Velasco Núñez, secretary-general of the Peruvian Indian Institute, appeared in the fifties.¹² Divided into 10 parts, the work concerns relevant constitutional provisions, administrative agencies, remedial or procedural matters, Indian registration, labor contracts, irrigation, agriculture, landlord-tenant relations (*yanaconaje*), tax exemptions, technical and grade school education, and other educational policies. Under each cited legal provision, there are notes consisting of complementary or superseding or superseded legislation and pertinent doctrinal or jurisprudential material.

Jesús Víctor Fajardo published the latest annotated work on Indian laws, decrees, ordinances, and resolutions covering the years from 1821 to 1960.¹³ Annotating the work are pertinent excerpts from the national Constitution, civil

⁹ Sivirichi, Atilio. *Derecho indigena peruano, proyecto de código indígena*. Lima, Ediciones Kuntur [1946] 550 p.

¹⁰ Ponce de León Pacheco, Francisco Javier. *Situación jurídico-penal de los aborígenes peruanos*. Cuzco. H. G. Rozas Suc., 1948. 106 p.

¹¹ Breña Pacheco, Leonor, and Nelson Cáceres A., comps. *Legislación de yanconaje; contiene todas las leyes, reglamentos y ejecutorias supremas hasta la fecha*. Lima, 1951. 32 p.

¹² Velasco Núñez, Manuel D., ed. *Compilación de la legislación indigenista*. Lima [Edit. Médica Peruana, 1959] 150 p.

¹³ Fajardo, Jesús Víctor, ed. *Legislación indigena del Perú; texto integro del Decreto Supremo sobre la Reorganización del Ministerio de Trabajo y Asuntos Indígenas último*. Lima, Edit. Mercurio [1961 ?] 216 p.

and criminal codes, procedural codes, ministerial resolutions, Supreme Court decisions, and treaties and other international agreements.

In 1966 Luis M. Castillo Delgado made a major contribution to the literature on the administration of justice vis-à-vis the Peruvian Indian.¹⁴ Written in textbook style, the work consists of three basic parts. The first treats of the general principles of civil procedure and other procedural rules applicable only to the Indian; the second, administrative procedures and remedies for Indian complaints and other Indian-related cases; and the third part, the new judicial procedure for settling agrarian disputes regarding possessory and proprietary rights between Indian communities or between them and private parties or the state. The new procedure was established under the provisions of Agrarian Reform Law 15037, pursuant to which land judges (*jueces de tierras*) were to observe new rules effective May 21, 1964. This work also carries the latest data on registered Indian communities as of 1964.

A 1972 work by Carlos Álvarez Beltrán¹⁵ appears to have bearing upon this section. Unfortunately, as far as can be ascertained, the material has not been acquired by the Library of Congress as of this writing. Available bibliographic information, however, seems to indicate that it is an annotated work on pertinent Indian laws and antecedents.

Municipal Law

Theoretically, Peruvian municipalities are administratively and financially autonomous, as expressed in article 206 of the Constitution. In practice, however, this autonomy is very limited. From time to time, laws¹ have been adopted granting the president of the Republic provisional powers to appoint municipal government councils and oversee their operations. Generally, the appointment rather than the election of these bodies arises out of "emergency" situations, and usually status quo is maintained until municipal elections are held under either an existing or newly adopted election law. Many functions once belonging to the municipalities, such as those relating to public services, charitable works, and the imposition of excise taxes, appear to have been transferred to the central government, as indicated by other laws.

¹⁴ Castillo Delgado, Luis M. *El procedimiento en la administración de justicia indígena*. [Cuzco. Edit. H. G. Rozas. 1966] 344 p.

¹⁵ Álvarez Beltrán, Carlos. *Estatuto especial de comunidades campesinas del Perú: antecedentes, concordancias, comentarios*. Perú. Distribuidores Mejía Baca. 1972. 204 p.

¹ Law 4012 of Dec. 8, 1919. In *Anuario de la legislación peruana*. 1919. p. 14-15.

Law 6327 of Nov. 9, 1928. In *Anuario de la legislación peruana*. 1928. p. 58.

Law 7482 of Jan. 18, 1932. In *Anuario de la legislación peruana*. 1933. p. 7.

The municipalities are regulated by the Organic Law promulgated in 1892² by President Remigio Morales Bermúdez. To date, however, many of its provisions have been amended or repealed, either expressly or tacitly.

A substantial number of works dealing with municipal organization and legislation exist, along with many collections or ordinances for Lima and other Peruvian cities. Various annotated and unannotated compilations of laws, resolutions, and ordinances pertaining to municipalities have been published. Selected items from these materials will be described in this section.

Dr. Juan José Calle, compiler of laws on the administration of and by departmental divisions,³ is also credited with an extensive work on municipal legislation,⁴ issued in dictionary form. Source materials cited therein are arranged under topical divisions.

By authorization of a supreme resolution dated April 24, 1936, an official handbook of municipal regulations and administration was published with government sanction by Drs. José Manuel Rodríguez y Montoya and Víctor Zamora Torres.⁵ This manual was completed in two volumes and represents an orderly compilation of city legislation, much of which is related to Lima, in force at that time.

A digest-style compilation with alphabetical topical entries is the work of Dr. Juan de Dios Lora. The original edition, printed in 1944,⁶ was followed several years later by a two-volume updated version.⁷

Mario A. Puga Imaña annotated the 1947 Municipal Election Law and the corresponding regulation in a brief, pocket-sized publication.⁸

The most comprehensive work to emerge in recent times appears to be that

² *Ley Orgánica de Municipalidades sancionada por la legislatura ordinaria de 1892*. Ed. oficial. Lima, Impr. de Estado, 1892. 32 p.

³ Calle, Juan José, *comp. Legislación de las juntas departamentales codificada . . .* Lima, E. Rosay, 1907. 446 p.

⁴ ———, *Diccionario de la legislación municipal del Perú*. Lima, Torres Aguirre, 1906-11. 4 v. [Printer varies for v. 3 and v. 4: Libr. é Impr. Gil]

⁵ Rodríguez y Montoya, José Manuel, and Víctor Zamora Torres, eds. *Manual de administración municipal autorizada por el Supremo Gobierno por resolución suprema de 24 de abril de 1936*. Lima, Tip. Peruano, S.A., 1936-37. 2 v.

⁶ Lora, Juan de Dios, ed. *Digesto municipal. Leyes, decretos, resoluciones, ordenanzas y demás disposiciones legales sobre municipalidades*. Lima [Empresa Gráfica Scheuch, S.A.] 1944. 310 p.

⁷ ———, *Digesto municipal. Autorizado por el Concejo Provincial de Lima*. [Lima] 1949. 2 v.

⁸ Puga Imaña, Mario A., *comp. Ley de Elecciones Municipales y reglamento*. [Chiclayo, Edit. Colonida, 1947] 72 p.

of Luis Alberto Dongo Denegri. It consists of three volumes⁹ published separately within a span of five years, the first two of which are coedited by Benjamin Chirinos Pacheco. The first volume treats of the Organic Law of Municipalities, its amendatory laws and other legislation pertinent to municipalities, including the drafts thereof. The second volume deals with the gamut of governmental activities and functions on the municipal level. It also includes interesting historical background on presidential appointments of municipal officials and their subsequent election from the early thirties to the early sixties. The third volume carries an analysis of a municipality's autonomy and presents laws on administrative procedure and municipal planning and development, together with amendatory, supplementary, or complementary laws and relevant jurisprudencia.

In 1963 S. Martínez G. edited a handbook on Law 14669 of September 24, 1963, authorizing the municipal elections of December 15 in the same year. The full text of the Organic Law of the Municipalities, as amended, is included together with the internal regulation for Lima.¹⁰

Four years later Ismael Bulnes Samamé¹¹ and the publishing firm of Editorial Mercurio¹² issued similar works containing the amendments to municipal-related legislation as of 1967. Bulnes' book provides an introductory summary showing a chronological listing of laws and decrees concerning municipalities.

The latest work on municipal law bears a 1972 imprint but has yet to be acquired by the Library of Congress. Available bibliographical sources indicate that the author is Dr. Mario Alzamora Valdéz,¹³ a former congressman from Cajamarca. According to an item previously described,¹⁴ the author was chairman of a revisory commission created by the Military Junta of 1962 to draft a new law of municipalities. Based on this information, it is believed that his 1972 work deals with the studies or results of the studies conducted by the commission which he headed.

⁹ Dongo Denegri, Luis Alberto, and Benjamín Chirinos Pacheco, eds. *Municipalidades; la Ley Orgánica de Municipalidades en concordancia con las disposiciones vigentes en materia de legislación comunal y con el proyecto y anteproyectos del gobierno local*. Arequipa [Edit. Universitaria] 1962-66 [i.e. 67] 3 v.

¹⁰ Martínez G., S., ed. *Guía Electoral Municipal*. Lima. Ediciones Martínez [1963] 187 p.

¹¹ Bulnes Samamé, Ismael, comp. *Legislación Municipal*. [Lima] Edit. Gráfica Labor, 1967. 679 p.

¹² *Ley Orgánica de Municipalidades*. Lima. Edit. Mercurio [1967] 218 p.

¹³ Alzamora Valdéz, Mario. *Derecho Municipal*. Perú, Distribuidores Mejía Baca. 1972. 284 p.

¹⁴ *Municipalidades; la Ley Orgánica de Municipalidades en concordancia con las disposiciones vigentes en materia de legislación comunal y con el proyecto y anteproyectos del gobierno local*, p. 8.

Financial Legislation

This section aims to cover items which deal primarily with the juridical aspects of Peru's financial legislation. Some materials of paralegal nature have had to be included as well since the subject of finance is difficult to separate from economics in general.

Few records of Peru's early fiscal policies and financial legislation exist. Perhaps this is a result of the country's history of disorderly succession of governments, intermittent revolts, civil wars, participation with Chile, Bolivia, and Ecuador in the destructive 1866 War against Spain, and further armed aggression against Chile between 1879 and 1883.

Once independent of Spain, Peru found itself confronted with a host of economic problems: debts incurred during the last years of the Viceroyalty, the desire of other countries to influence her economic development which had been retarded by Spain's monopolistic trade policy with her colonies, readjustment or settlement of the property rights of the Spaniards, and the need for industrialization and a new tax system to fortify the economy of a sovereign nation. To untangle these problems, numerous executive decrees and legislative provisions were adopted, but none, unfortunately, followed a definitive national policy.

In 1845 during the administration of President Ramón Castilla, innovative measures were taken to improve public finances. A budget was prepared to take effect the following year so that, for the first time, the assets and the expenditures of the government could be recorded and made public. This budgetary process has since become an important function of Peru's governments.¹ Trade in a number of products, particularly in valuable nitrate, increased. In addition, a government monopoly in the sale of guano deposits aided foreign credit.

This upward economic trend, however, was short-lived. Banking difficulties arose, and in 1872 the monetary standard, silver, was devalued. By the time Peru went to war in April 1879 in alliance with Bolivia against Chile, a financial crisis had taken root. By 1880 the superior Chilean forces gained complete possession of southern Peru with its rich nitrate- and guano-producing provinces and had attained, in effect, control over Peruvian finances. The war ended, and under the terms of the Treaty of Ancón, signed on October 23, 1883, Chile kept Peru's wealthiest provinces, thus permanently crippling Peru's access to the profitable nitrate and guano industries. Compounding these difficulties, industry suffered in the ensuing years when machinery inevitably became obsolete. Moreover, banking techniques became inadequate, and many banks failed.

¹ *Presupuesto General*. Lima. [Library of Congress collection contains 8 v. published in 1942, 1943, 1951, 1956, 1957, 1958, 1959, and 1960 respectively]

In 1886 under the newly formed government of President Andrés Cáceres, the economy showed a modicum of recovery. The currency was reformed with gold as the new monetary standard, the foreign debt was canceled, and industry, agriculture, mining, and communications advanced significantly. A new tariff was adopted in 1901. Government monopolies in the salt and tobacco industries were created, and a more adequate tax system was designed.

The advent of World War I blocked the continued financial progress of Peru. Although the country did not participate actively in the hostilities, her trade, industries, and finances were seriously debilitated because commercial relations with European countries came to an almost complete standstill. The economic depression that followed the war dashed Peru's hopes for an early financial recovery.

In 1930 a U.S. financial mission, led by Dr. Edwin Walter Kemmerer, was invited by President Sánchez Cerro to visit Peru and study the financial and economic organization of the country. The Kemmerer mission wrote several reports calling for new legislation in place of the existing laws on taxes, customs, banking, public credit, national treasury, income, budget, and monetary system. Draft laws resulting from these studies were published in both Spanish and English.² Some of these proposals were eventually enacted into law (*infra*) and probably contributed to the subsequent improvement of Peru's financial condition.

² *Project of an organic customs law, together with a report in support thereof.* Lima [Princeton Univ. Press] 1931. 178 p.

Proyecto de ley orgánica de aduanas, junto con su exposición de motivos. Lima, Impr. Torres Aguirre, 1931. 392 p.

Project of a general banking law . . . Lima [Princeton, printed at the Princeton Univ. Press] 1931. 85 p.

Report on the public credit of Peru. Lima [Princeton, printed at the Princeton Univ. Press] 1931. 110 p.

Project of the law for the creation of the Central Reserve Bank of Peru . . . Lima [Princeton, printed at the Princeton Univ. Press.] 1931. 105 p.

Proyecto de ley para la creación del Banco Central de Reserva del Perú, junto con su exposición de motivos. Lima, Impr. Torres Aguirre, 1931. 227 p.

Project of law for the reorganization of the national treasury . . . Lima [Princeton, printed at the Princeton Univ. Press] 1931. 10 p.

Proyecto de ley para la reorganización del tesoro nacional junto con su exposición de motivos. Lima, Impr. Torres Aguirre, 1931. 32 p.

Report on the taxation policy of Peru. Lima, 1931. 15 p.

Informe sobre la política tributaria del Perú . . . Lima, Impr. Torres Aguirre, 1931. 40 p.

Project of an organic budget law . . . Lima [Princeton, printed at the Princeton Univ. Press] 1931. 40 p.

Project of a monetary law . . . Lima [Princeton, printed at the Princeton Univ. Press] 1931. 23 p.

Project of an income tax law . . . Lima, 1931. 27 p.

Proyecto de ley de impuesto sobre la renta junto con su exposición de motivos. Lima, Impr. Torres Aguirre, 1931. 74 p.

Shortly before the Second World War, the country showed satisfactory progress but was soon adversely affected by the outbreak of the European conflict. Deficit spending and increasing foreign debt brought inflation. At the end of the war, on April 8, 1946, Peru adhered to and ratified the Bretton Woods convention³ on monetary matters, hopeful of stabilizing her domestic and international financial condition.

Encouraging signs of growth are evident in Peru's post-World War economy. In 1950 the fishmeal industry was launched, and by 1965 export revenues from this industry became reminiscent of the guano bonanza of the 19th century. With the exception of one short lapse in the mid-forties, Peru's 20th-century economy made forward strides until a financial crisis occurred in 1967-68, causing the downfall of President Belaúnde Terry's civilian regime.

There are a few items on the general financial development and the fiscal policies of Peru which merit description in this section. A 1926 volume of the Trade Promotion Series, issued by the U.S. Bureau of Foreign and Domestic Commerce, under the authorship of Charles A. McQueen,⁴ is devoted to the history and analysis of Peru's financial development.

In the same year a sketch of the economic history of Peru was published and attributed to Dr. César Antonio Ugarte, professor at the Faculty of Political Science and Economics in Lima.⁵ The sketch covers the financial organization of the pre-Inca period, the Inca Empire, Spain's colonial regime, and Peru's post-independence existence up to 1900.

Another contribution was made by Dr. Lizardo Alzamora Silva⁶ who, in an open letter to the press, comments on the Kemmerer financial mission and its proposals for improving the general economic conditions in Peru.

A text used by Dr. Toribio Alayza y Paz Soldán in his courses on economics at San Marcos University emerged in 1937.⁷ The "lessons" cover such topics

Project of law reorganizing the Department of Comptroller General of the Republic. Lima [Princeton, at the Princeton Univ. Press] 1931. 36 p.

Project of law authorizing provincial and district councils to impose a real property tax . . . Lima [Princeton, at the Princeton Univ. Press] 1931. 17 p.

Proyecto de ley autorizando a los concejos [sic] provinciales y distrales para establecer una contribución predial . . . Lima, Impr. Torres Aguirre, 1931. 53 p.

³ Resolución Legislativa No. 10343 del 2 de enero de 1946 aprueba los Acuerdos del Fondo Monetario de Bretton Woods. In *El Peruano*, Feb. 7, 1946.

⁴ McQueen, Charles A. *Peruvian Public Finance*. Washington. Govt. Printing Office, 1926. 126 p. (Trade Promotion Series, no. 30, Department of Commerce)

⁵ Ugarte, César Antonio. *Bosquejo de la historia económica del Perú*. Lima, Impr. Cabieses, 1926. 214 p.

⁶ Alzamora Silva, Lizardo. *Sobre el plan Kemmerer*. Lima, Libr. é Impr. Gil, 1931. 49 p.

⁷ Alayza y Paz Soldán, Toribio. *Legislación financiera del Perú*. [Lima] Edit. Apolo, 1932. 116 p.

as government income and expenditures, types of taxation, government monopolies, the comptroller generalship of the nation, foreign and internal debts, and municipal finances.

Dr. Joaquín Ortega Zegarra compiled, with official authorization, an alphabetical index of Peru's economic and financial legislation and administrative regulations covering the period from 1821 to 1933.⁸ The book contains brief annotations and cross-references.

Peru's economic difficulties received the faithful attention of a civil engineer turned politician, Juvenal Monge. While a congressman from the Province of Pancartambo, he served as chairman of the committees on the treasury and postwar problems of the lower house of the Peruvian Congress. He also represented his country at the Bretton Woods conference, the Mexican conference on problems of peace and war, and the United Nations conference on international organization held in San Francisco. Monge's collection⁹ of congressional debates and speeches on these matters should prove valuable to the legal researcher.

Dr. Rómulo A. Ferrero, eminent Peruvian agronomist, economist, educator, and former minister of finance and commerce, has produced a treatise elaborating Peruvian policies in the economic and financial fields.¹⁰ Of the several other works by the same author on these subjects, two have been located and analyzed. They bear 1957¹¹ and 1966¹² imprint dates. The more recent study provides enlightening economic facts concerning Peru. Dr. Ferrero asserts that in a 15-year period beginning in 1950 the country's GNP increased by 128 percent, and that following this period, the growth rate averaged about six percent, one of the highest in Latin America. He compared this figure with an average population growth of three percent. Furthermore, in this work he points out that the lack of integration among Peru's three geographic areas, the costa, the sierra, and the selva, and the slow development of the selva region are serious economic as well as social problems for the nation.

⁸ Ortega Zegarra, Joaquín. *Digesto de hacienda del Perú*. [Lima. Impr. Casa Nacional de Moneda. 1929-34] 2 v.

⁹ Monge, Juvenal. *Discursos Parlamentarios*. Lima. Libr. é Impr. Gil, S.A., 1945. 252 p.

¹⁰ Ferrero, Rómulo A. *La política fiscal y la economía nacional*. Lima. Edit. Lumen, S.A., 1946. 77 p.

¹¹ Ferrero, Rómulo A., and Arthur J. Altmeyer. *Estudio económico de la legislación social peruana y sugerencias para su mejoramiento*. Lima. 1957. 176 p.

¹² Ferrero, Rómulo A. "Peru's Economic and Financial Situation." In *Bank of London and South America (B.O.L.S.A.) Review*, v. I, June, 1967, p. 296-303.

An ambitious work on currency by a Peruvian author is that of Bruno Moll.¹³ The original edition appeared in 1938, followed by a second edition in 1946, and a revised and greatly enlarged edition published in 1949. The bulk of the work deals with currency in general terms and offers technical, historical, and theoretical evaluations of substantive matters, both domestic and international, involving monetary system or standards, devaluation and revaluation, inflation, central banking, and exchange controls.

Emilio Romero, a lawyer and professor who served his country as congressman in 1931 and director general of finance in 1939, wrote a book on the history of Peru's economy, dating from pre-Inca times to the modern era.¹⁴ The study, printed in 1949, is an excellent treatise offering detailed facts and impressive statistics reflecting Peru's commerce, industry, production, and other economic indicators. Reliable bibliographical sources indicate that the same author published another work of a similar title 12 years earlier.

In 1950 a similar work was published in Lima by Manuel Fuentes Irurozqui,¹⁵ then an economic counselor in the Spanish Embassy in Peru's capital city. Within the same year, Juan Lino Castillo Vargas produced in pamphlet form the constitutional and administrative norms governing the preparation, supervision, execution, or implementation of government budgets and finances.¹⁶ Appearing at about the same time as the last two works cited is a law school thesis by Rodolfo Zamalloa Loaiza¹⁷ which is included in this section primarily because of its unique theme: money and wage factors vis-à-vis standard of living, and cost of living adjustments in Peru.

A monthly publication issued initially in 1952 by the Sociedad Nacional de Industrias (National Industrial Association)¹⁸ contains statistical data, among other materials, and should serve as a useful and important guide to the agricultural, commercial, and industrial factors in Peru's financial and economic

¹³ Moll, Bruno. *La Moneda*. Lima, Libr. é Impr. Gil, S.A., 1938. 402 p.; 2.ed. corr. y aum. 1946. 415 p.; 3.ed. corr. y aum. 1949. 407 p. [Printer varies]

¹⁴ Romero, Emilio. *Historia económica del Perú*. Buenos Aires, Edit. Sudamericana [1949] 471 p.

¹⁵ Fuentes Irurozqui, Manuel. *Síntesis de la economía del Perú*. Lima [Empresa Gráfica Sanmarti] 1950. 268 p.

¹⁶ Castillo Vargas, Juan Lino. *El derecho presupuestario en el Perú*. Lima, Edit. P.T.C.M., 1950. 89 p.

¹⁷ Zamalloa Loaiza, Rodolfo. *El coste de vida i la legislación peruana; apreciaciones sobre la variabilidad [sic] interna del poder adquisitivo de la moneda, determinada por las fluctuaciones del coste de vida, como factor modificante de las relaciones jurídico-patrimoniales*. Cusco, Univ. Nacional del Cusco, 1950. 199 p. (Tesis Universitarias, v. 2) [Thesis]

¹⁸ *Panorama económica del Perú*. Lima, Impr. Gil, 1952- 1 v.

status. It cannot be ascertained from available source materials whether or not the publication continues to be printed.

Fidel A. Zárate, who has written prolifically in literary, legal, and economic fields, is the author of an absorbing treatise on economic, monetary, and banking "laws," which he categorizes under the term "monetología."¹⁹ A coined word, its use is justified by the author because of the imprecision of economics as a science and the inability of economics to submit to a specific single rule or a fully accepted universal nomenclature. His work does not deal with specific statutory laws; it is a critical analysis of classic economic theories and practices in both capitalist and socialist regimes. The first and third chapters of this volume are major ones. The second chapter, on monetary matters, refers to the 1942 journal of the School of Economics of San Marcos University, where the work originally appeared.

Ulises Montoya Alberti chose the subject of economic and financial laws for his law school dissertation.²⁰ Published in 1966, the work stresses the inter-relationships of the two disciplines and includes, among others, "development legislation" in industrial, commercial, and social planning, economic integration and common markets, and government intervention in these matters. The author analyzes various doctrines, both foreign and Peruvian, on these sociolegal relations and outlines in the same manner the relationship of economics with individual or special branches of law.

Taxation

The Peruvian tax system in the early republican period was merely a continuation of that enforced during the colonial era. Although President Castilla, by his decree of July 5, 1854, abolished the tax on Indians and appointed a committee to study and revise other existing taxes, the committee report, submitted July 16, 1856, proposed to leave the existing legislation, which was familiar to the people, more or less intact. Consequently, only a few minor changes based on committee recommendations relative to property, patent, personal, credit, customs, "patriotic aid," and excise taxes were implemented by subsequent legislation.

From the early 1900's to the mid-1960's, a government agency known as Caja de Depósitos y Asignaciones, Departamento de Recaudación (Office of

¹⁹ Zárate, Fidel A. *Monetología, leyes económicas y leyes bancarias*. Lima [Edit. San Marcos] 1956. 155 p.

²⁰ Montoya Alberti, Ulises. *El Derecho Económico*. Lima, Univ. Mayor de San Marcos, 1966. 115 p.

Deposits and Assignments, Department of Collection) was the country's administrative machine for tax collection. Pursuant to article 11 of Supreme Decree 55-H of April 24, 1964, however, the tax collection functions of the Caja were absorbed by the Superintendencia Nacional de Contribuciones (National Superintendency of Taxes), a government agency later reorganized and renamed Dirección General de Contribuciones (General Tax Administration) under Decree-Law 17521 of March 24, 1969, which adopted the new Organic Law for the Ministry of Finance in the present revolutionary government.

The Income Tax Law traces its beginnings to the personal tax, but as a general tax on income its first legislative form was not established until 1924 when a draft law was offered by the then minister of finance, Dr. Rodríguez Dulante, for the consideration of the Peruvian Congress. Apparently this draft did not become law, but a second and similar draft, dated September 27, 1926, was approved, becoming law No. 5574 of December 11, 1926. This was periodically amended until eight years later when it was repealed.

Subsequently, a new income tax law, based on the legislative proposals of the Kemmerer Mission (*supra*),¹ was enacted on July 26, 1934, as Law No. 7904.² Its enforcement, however, was suspended during 1935 because the agencies projected to administer the tax under the terms of the law had not yet been set up. The law was enforced the following year and has remained to date Peru's basic income tax law, albeit extensively amended. This basic law on taxation classifies income taxes as follows: taxes on income from capital investment, tax on industrial and commercial profits, tax on profits from professional practice, tax on income from real estate, taxes on wages and salaries, progressive supplementary tax on income, and fixed rate supplementary tax. There are, however, other taxes covered specifically by different laws. This group includes inheritance and gift taxes, business licenses, registration tax, import and export tax, unemployment tax, real property transfer tax, tax on profits from real estate transfers, otherwise known as capital gains tax (*impuesto de plus valía*), and stamp taxes.

There are various compilations of tax legislation, some limited to a single aspect of the subject and others covering the entire field. Some contain extensive annotations and commentaries, and others constitute a mere compilation of texts.

In the early twenties the Compañía Recaudadora de Impuesto, a section established by a resolution of March 30, 1927, in the Caja de Depósitos y Consignaciones, issued a complete handbook on the various tax laws, together

¹ *Project of an income tax law* . . . Lima, 1931. 27 p.

² *Ley de impuestos sobre la renta*. Ed. oficial. [Lima, Impr. Torres Aguirre] 1934. 50 p.
Ley No. 7904 de impuestos sobre la renta y decreto supremo modificatorio de 25 de julio de 1935. Ed. oficial. [Lima, Impr. Torres Aguirre] 1935. 62 p.

with its regulations, constitution, and bylaws, and other pertinent information concerning the office.³

Augusto Thorndike issued a similar, one-volume handbook⁴ in which an alphabetical subject classification is used. A supplement to this volume was published in 1932.⁵ Much later Thorndike, in collaboration with another lawyer, Enrique Vidal Cárdenas, issued a second volume to cover all tax legislation enacted in a period of 10 years from 1932. Vidal Cárdenas, in 1947, updated the Income Tax Law and regulations and published them together with pertinent administrative cases.⁶

Ernesto Zapata commenced what he hoped would develop into a series of tax law digests with a 1934 volume dealing with fees and taxes on registration and personal and real property transfer.⁷ It appears that after this initial publication, the author must have perceived a lack of demand and discontinued the series.

The annotated and unannotated texts of the 1934 Income Tax Law were issued in the year of its promulgation by Eduardo García Calderón⁸ and the International Bank of Peru,⁹ respectively.

The Caja de Depósitos y Consignaciones printed an official bulletin which appeared monthly at first and later at varying intervals. It contains ministerial resolutions, announcements, orders, circulars, and statistical data on tax-related matters.¹⁰ The same office published a large volume containing all materials on taxation, including laws, decrees, resolutions, and contracts in force as of March 30, 1935.¹¹ The actual compilation was done under the editorial direc-

³ *Manual que contiene las leyes sobre impuestos fiscales, contrato para su recaudación . . .* Lima, Impr. Americana, 1921. 169 p. (Compañía Recaudadora de Impuesto)

⁴ Thorndike, Augusto. *Guía de la legislación tributaria del Perú*. Lima, Sanmartí y Cía. 1929-43. 2 v.

⁵ ———. *Primer Anexo 1930-31*. Lima. Sanmartí y Cía, 1932. 117 p.

⁶ Vidal Cárdenas, Enrique. *comp. Legislación de impuestos a la renta*. Lima, Libr. é Impr. Gil, 1947. 600 p.

⁷ Zapata, Ernesto. *Legislación tributaria del Perú*. Lima. Impr. Lit. del Estanco del Tabaco, 1934. 146 p.

⁸ García Calderón, Eduardo. *Ley de impuesto sobre la renta*. Lima. Libr. é Impr. Gil, 1934.

⁹ Banco Internacional del Perú. *Impuestos sobre la renta. Ley No. 7904 de 26 de julio de 1934*. Lima. Libr. é Impr. Gil. S.A., 1934. 62 p.

¹⁰ Caja de Depósitos y Consignaciones, Departamento de Recaudación. *Boletín*. Lima, Libr. é Impr. Gil. [etc.]

¹¹ Caja de Depósitos y Consignaciones. *Leyes especiales sobre tributación. Resoluciones y disposiciones legales anteriores*. Lima. Libr. é Impr. Gil, 1935. 581 p.

tion of Benjamín Roca Muelle. A similar but less extensive compilation was issued in the same year by the National Agrarian Society.¹²

Dr. M. Julio Delgado A.,¹³ legal counsel of the Superintendencia General de Contribuciones, wrote a fine exegetic work on the Income Tax Law. This was published in 1935 as part of a government-funded and authorized series called *Legislación Financiera y Económica del Perú*. Individual provisions of the law are extensively annotated; amendatory or modifying provisions of the law are printed in italics. The study won wide acclaim and on the recommendation of the Colegio de Abogados of Lima was awarded a prize by the municipality of Lima. Several years later Dr. Delgado edited an annotated compilation involving documentary taxes¹⁴ as part of the same government-funded publication series.

In 1938 a reprint of the 1934 Income Tax Law was published by a commercial firm.¹⁵ In the same year a trio of editors, Juan D. Peral, José Demetrio León, and W. Rossell de Cárdenas,¹⁶ annotated the same law, together with its various regulations and amendatory Laws 7837, 8021, and 8585, among others. A year later an unannotated text of the same materials was published by the government.¹⁷

Guillermo Ureta del Solar made two contributions to the literature on taxation. The first,¹⁸ his doctoral thesis at the University of Chile, discusses the need for legislative reforms of Peruvian inheritance and transfer taxes; the second¹⁹ covers income tax and government monopolies.

The editorial house of La Atlántida issued two pamphlet editions²⁰ of a col-

¹² Sociedad Nacional Agraria. *La tributación directa en el Perú. La nueva legislación y las decretos complementarios*. Lima. Imp. Lit. del Estanco de Tabaco. 1935. 731 p.

¹³ Delgado A., M. Julio. *Impuesto a la renta*. Lima. 1935. 608 p. (*Legislación financiera y económica del Perú*)

¹⁴ Delgado A., M. Julio, ed. *Tímbr y papel sellado; compilación en perfecto acuerdo con las fuentes auténticas de dispositivos vigentes, concordados y anotados, con la nueva Ley 9923 y tarifas y reglamentos consulares últimos*. Lima, 1944. 315. xxiv. iv p. (*Legislación financiera y económica del Perú*)

¹⁵ *Divulgación tributaria. Ley No. 7904. Impuesto sobre la renta*. [Lima] Impr. La Voz de Tarma, 1938. 99 p.

¹⁶ Peral, Juan D., José Demetrio León, and W. Rossell de Cárdenas, eds. *Legislación del impuesto de la renta*. [Lima] 1938. 145 p.

¹⁷ *Ley de impuestos sobre la renta, reglamentos, decretos y resoluciones*. Publicación oficial de la Dirección General de Contribuciones. [Lima] 1939. 179 p.

¹⁸ Ureta del Solar, Guillermo. *Los impuestos al tráfico del patrimonio en el Perú*. Lima, Sanmartí y Cía., 1938. 164 p.

¹⁹ ———. *Legislación tributaria del Perú. Impuestos sobre la renta. Estancos y monopolios. Impuestos al gasto*. Lima. Sanmartí y Cía., 1938. 122 p.

²⁰ *Especies valoradas. Recopilación de leyes tributarias, decretos i resoluciones ministeriales i supremas*. [Lima. 1934?] 2.ed. Lima, Impr. Atlántida, 1938. 132 p.

lection of tax legislation with special reference to documentary stamps and stamped paper. These editions cover legislation enacted between 1888 and 1937. Special issues of the organ of the Asociación de Comerciantes contain a chronological collection of the same type of statutes, with excellent indexes. One appeared in 1938 covering legislation up through May of that year, and the second, issued in 1944, included the new legislation adopted since 1938.²¹ A few notes are found in addition to cross-references and citations.

One of the finest and most valuable reference works in a special branch of taxation is Dr. Juan Lino Castillo Vargas' manual on inheritance and succession taxes.²² Its initial chapter traces the historical development of these special taxes from the Spanish colonial period. Other chapters deal with proof of relationship between the taxpayer and his beneficiaries, amounts of taxes, and procedure to be followed in making claims. In an extensive anexo, all texts of laws, supreme decrees, and administrative and legislative resolutions are included, together with other provisions adopted between 1850 and 1944. Another significant contribution from the same pen was published in 1965. This treats of the modern concept of public finance and cites financial and legal grounds for tax reform which would, the author hopes, reflect more accurately the "characteristics" of Peru's economic structure.²³

An unannotated compilation of all types of tax legislation appeared in 1944 as an "extra publication" of the serial *Normas Legales*, which carried texts of financial and commercial legislation in its annual volumes.²⁴ The first 77 pages, edited by Oscar Balderrama Tudela, a periodical editor, give the contents of the various laws in summarized form as supplied by the Superintendencia General de Contribuciones. A separate publication of the same periodical was printed in 1949 and described stamp tax legislation.²⁵

Ernesto A. Velarde Morán, an official of the Superintendencia Nacional de Contribuciones, published several collections on tax legislation between 1945 and

²¹ "Legislación completa de timbres fiscales y timbres especiales en el Perú." In *Revista Mensual del comercio del Perú*. No. 185. Jan., 1938. 344 p.; Same. Lima, 1944. 100 p.

²² Castillo Vargas, Juan Lino. *Manual de impuestos peruanos de sucesión*. [Lima] Publicado por el Banco de Crédito del Perú. 1944. 488 p.

²³ ———. *Tributación y Derecho*. [Lima] Ediciones Studium, 1965. 23 p.

²⁴ *Leyes, decretos, resoluciones y jurisprudencia vigentes sobre los impuestos . . .* Publicación de la revista *Normas Legales* dirigida y editada por Oscar Balderrama Tudela. [Lima] 1944. 425 p.

²⁵ Balderrama Tudela, Oscar, ed. *Prontuario de la legislación de timbres y papel sellado*. 11. ed. ?1 2.ed. Lima. Normas Legales. 1949. 70 p.

1962. His first book, containing tables of tax rates and pertinent legislation,²⁶ proved to be such a handy reference tool that it was reissued in two enlarged editions under a different title.²⁷ Three other works²⁸ from Velarde Morán follow substantially the same format as his earlier ones; source materials are grouped systematically under special topics, for example, legislación jurisprudencia. These collections should appeal not only to the barrister but also to the businessman and accountant, since they include explanations or practical illustrations of such phases of tax work as profit and loss statements for tax accounting and irregular or criminal practices.

Another useful source of practical information for taxpayers and tax counselors is a series of taxpayer's guides by Antenor del Pozo and Alfredo S. García González.²⁹ In one of the guides the joint authors provide notes on the development of Peruvian taxation from its earliest days, followed by chapters dealing with calendar dates for payment of such types of taxes as personal income, urban and agricultural property, professional salary, license, health, and miscellaneous fees and quotas. Procedure for collection and claims, limitations of action, and other procedural matters are covered. A supplementary pamphlet edition updates the main work. In another guide the same authors present a very extensive collection³⁰ dealing with stamped paper and stamp duties, registration taxes

²⁶ Velarde Morán, Ernesto A., ed. *Manual cálculos y normas legales tributarias*. [Lima, Publicidad Americana] 1945. 151 p.

²⁷ ———. *Normas legales tributarias y técnicas contables con las últimas leyes, decretos y resoluciones sobre tributación (jurisprudencia fiscal)*. [2.ed.] Lima, Libr. Internacional del Perú [1947] 426, xxiii p.

———. *Normas legales tributarias y técnicas contables; balances, impuestos a la renta e indirectos, jurisprudencia fiscal y sucesiones*. Another ed. Lima, Impr. Goicochea [1949] 561, I p.

²⁸ ———. *Normas contables y legislación tributaria; disposiciones sobre balances de los libros de contabilidad, sucesiones y jurisprudencia fiscal, control de sucursales de sociedades, fraudes, estafas, irregularidades*. Lima, Edit. Ayacucho [cover 1956] 441 p.; 2.ed. 1959. 512 p. [Title varies]

———. *Legislación y jurisprudencia tributaria en el Perú; leyes, decretos, resoluciones y jurisprudencia del Consejo Superior de Contribuciones sobre impuesto a la renta, libros de contabilidad, balances y sociedades anónimas, sistematización de la legislación tributaria y normas contables*. Lima [Impr. del Ministro de Guerra, 1962 ?] 379 p.

²⁹ Pozo, Antenor del, and Alfredo S. García González, eds. *Impuestos en el Perú*. Lima, 1959. 931 p. (Ediciones guía del contribuyente)

———. *Las nuevas leyes tributarias, suplemento de Impuestos en el Perú*. Lima, 1959. 78 p. (Ediciones guía del contribuyente)

³⁰ ———. *Guía del contribuyente para el exacto cumplimiento de las leyes sobre impuestos de timbres y papel sellado, registro, alcabala de enajenaciones, ganancias en la transferencia de inmuebles (plusvalía), joyas y artículos de lujo e inscripciones o transferencias de vehículos. Obligaciones y dispositivos legales, relacionados con el registro de ventas. Inscripción en los registros públicos (incluye aranceles de registros públicos y del Archivo Nacional. Registro*

involving real estate and motor vehicles, registry fees for sales contracts, including the rights and duties of diplomatic and consular agents and international organizations with reference to some of these matters. Other works in this series are cited under relevant sections of this guide.

Within the last two decades more works of the type just described emerged. They include Daniel Amézaga Carranza's on inheritance and transfer taxes and related jurisprudence covering the period from 1916 to 1959;³¹ Angel Eduardo Valdivia R.'s on license taxes;³² Edgardo Maguiña Pajuelo's³³ and J. V. Fajardo's³⁴ individual collections on various categories of taxes; the Banco Industrial del Perú's³⁵ on tax exemptions for certain types of commercial and agricultural enterprises; Gregorio Rueda Sánchez's³⁶ on license and property taxes; and Manuel A. Capuñay C.'s³⁷ on the basic Income Tax Law, with its regulations, as amended through 1967. The most comprehensive compilation to date on tax legislation was produced during this time by Juan P. Anticona Moreno.³⁸ His work begins with the Código Tributario, a tax code which went into force on October 17, 1966, followed by nearly all remaining categories of tax laws and regulations treated in the individual compilations previously described. A useful taxpayer's guide for filing income tax returns was published in 1969 by David Ibérico R.³⁹ A looseleaf survey on the world's income tax legislation, prepared by the Foreign Tax Law Association in the United States, initiated in 1955 a *Peruvian Income Tax Service* which was published in New

fiscal de ventas y plazos). Privilegios acordados a los funcionarios diplomáticos, consulares y de organizaciones y organismos internacionales. Lima [Tall. Gráficos de la Edit. Antonio Lulli, S.A.] 1957. 437, xxv p.

³¹ Amézaga Carranza, Daniel, *ed. Legislación y jurisprudencia de impuestos de sucesión.* Lima, 1959. 151 p.

³² Valdivia R., Angel Eduardo, *comp. Cartilla tributaria para comerciantes, empleados, profesionales.* Lima, 1960. 27 p.

³³ Maguiña Pajuelo, Edgardo, *ed. Manual del contribuyente del 3% [i.e. tres por ciento]: Ley 11672 y del timbre antituberculoso, Ley 9507 y disposiciones complementarias.* Lima, Lit. Tip. C[aja] de D[epósitos] y C[onsignaciones] D[epartamento de] R[ecaudación, 1961] 185 p.

³⁴ Fajardo, Jesús Víctor, *ed. Legislación tributaria del Perú.* Lima, Edit. Mercurio [1963] 294 p.

³⁵ Instituto Nacional de Promoción Industrial. Banco Industrial del Perú. *Ley y reglamento sobre exoneraciones tributarias en la selva peruana.* Lima, 1965. 25 p.

³⁶ [Rueda Sánchez, Gregorio, *ed.*] *Patente comercial e industrial y profesional y predio rústicos y urbanos.* [Lima ?] Ediciones "El Perú y sus Leyes," 1966. 251 p.

³⁷ Capuñay C., Manuel A. *Actualización y concordancia de la Ley 7904 y reglamentos.* [Lima, Edit. "Guión," 1967] 138 p. (Guión: "Sección Libros," 1)

³⁸ Anticona Moreno, Juan P., *comp. Enciclopedia Legal Tributaria.* No oficial. Lima [Tip.-Offset "Sensator," 1969] 1174, lxxxiii p.

³⁹ Ibérico R., David. *Nuevo régimen general: declaración jurada del impuesto a la renta.* [Lima, Edit. Guión, 1969] 143 p.

York and edited by Donald O. Wallace.⁴⁰ This has since been superseded by a new set published in 1969 in Florida,⁴¹ which is being updated constantly as the new translated laws become available. As of this writing, looseleaf insertions show the full English text of the Tax Reform Decree No. 287-HC of August 9, 1968, as amended through 1970, which introduces what some experts believe to be radical changes in Peru's income, property, corporate, and stock ownership tax legislation.

The Confederación Nacional de Comerciantes (National Confederation of Merchants), known as CONACO, also treats of this latest tax legislation in a 1969 primer⁴² for commercial establishments. The first part of this primer analyzes the principal amendments introduced by the new law. The second part incorporates the full text of the law itself, with marginal notations. The third and last part includes the texts of other pertinent laws and regulations adopted in 1968 concerning commercial and industrial taxation. In the same year that CONACO's primer was published, a valuable contribution to the field of case law was published by Drs. Guillermo Cornejo Soto and Luis Castañeda Ramírez.⁴³ The work consists of a systematized and annotated compilation of consultas and cases on the general subject of taxation brought before Peru's Fiscal Tribunal. It contains a subject index, printed on blue sheets, and a chronological index. Other volumes may be published later. Two years before these last two works appeared, Enrique Noriega del Valle N., accountant and tax consultant, reproduced the full text of the Código Tributario, annotating its individual provisions where necessary.⁴⁴

In Peru, as in most civil law jurisdictions, there is hardly any transaction, contract, statement, declaration (e.g., affidavits, certificates), registry inscription, or cancellation made, or any civil or commercial act documented which does not require official stamps. It is imperative then for accountants, merchants, government functionaries, and lawyers, especially those who are commissioned as notaries public, to know each day which is the current legal stamp and what revenue is required. Consequently, to assist these individuals in their work a number of reference materials have been published on this subject. In addition

⁴⁰ Wallace, Donald O., ed. *Peruvian income tax service*. Centerport, N.Y., Foreign Tax Law Association, Inc., [1955?-]

⁴¹ *Peru income tax service*. Revised, Feb., 1969. St. Petersburg, Fla., Foreign Tax Law Association, [1969-] 1 v.

⁴² *Impuestos en el Perú*. Lima, Confederación Nacional de Comerciantes, 1969. 247 p.

⁴³ Cornejo Soto, Guillermo, and Luis Castañeda Ramírez, comps. *Jurisprudencia del tribunal fiscal*. . . . Lima, 1969. 330 p.

⁴⁴ Noriega del Valle N., Enrique, ed. *Código tributario peruano: D.S. 263-II de 6-9-66, vigente desde el 17-10-66; [concordancias, comentarios y ejemplos]* Lima. E[dit.] U[niverso, 1967] 92 p.

to those already mentioned, J. M. Valega,⁴⁵ José Vásquez Estremadoyro,⁴⁶ and CONACO⁴⁷ have each published works on stamp tax laws. The first is contained in an unannotated, 30-page pamphlet. The other two are more extensive in scope and annotated.

Among the source materials which may be categorized either as monographs or treatises, a joint institutional study⁴⁸ comparing Peruvian and Latin American tax systems may be cited. Prepared by a bank association in collaboration with four other institutions—Lima's Chamber of Commerce, the National Agrarian Society, the National Society of Industries, and the National Mining Society—the study's objective was threefold: to analyze the tax and social legislation of Peru and pinpoint the defects therein, to compare the Latin American systems and determine existing differences, and to formulate and propose needed and practical reforms.

Another monographic work is a well-written university law thesis by Luis Carlos Rodrigo Mazuré⁴⁹ on valuation of corporate capital stock or capital assets of mercantile companies. It discusses at length the distinctions among cash assets (activo disponible), liquid assets (activo circulante), capital assets or fixed assets (activo fijo), goodwill or intangible assets (activo nominal), and their valuation for purposes of taxation.

Other works which contain a substantial amount of comment and analysis come from both lawyers and economists. Carlos Capuñay Mimbela, economics professor at San Marcos University, has published an analytical work on income and license taxes in which he includes legal forms to guide tax lawyers. It has gone through several editions.⁵⁰ Professor Ferrero, the outstanding Peruvian economist, has compiled in one volume⁵¹ a series of his newspaper articles, pub-

⁴⁵ Valega, José Manuel. *ed. Ley de timbres [No. 1183, 1. de mayo de 1952, su reglamento y leyes modificadas]* [Lima] Libr. é Impr. D. Miranda [1952?] 30 p.

⁴⁶ Vásquez Estremadoyro, José, *ed. Legislación de timbre fiscal único*. Arequipa, 1953. 100 p.; another ed. 1957. 100 p.; 2.ed. 1959. 153. xvii p. [Place of publication and printer vary]

⁴⁷ CONACO (Confederación Nacional de Comerciantes) *Impuestos de Timbres. Digesto*. Lima [Tall. Gráficos de la Libr. é Impr. "Minerva," 1966] 103 p.

⁴⁸ *Estudio comparado de los impuestos a la renta en el Perú y los demás países de América*. Lima, Libr. é Impr. Gil, 1952-53. 2 v.

⁴⁹ Rodrigo Mazuré, Luis Carlos. *Los impuestos y la revaluación del activo en las sociedades anónimas*. Lima, Impr. Santa María. [1953] 207 p. [Thesis. Pontifical Catholic University of Peru]

⁵⁰ Capuñay Mimbela, Carlos. *Legislación tributaria; análisis de los impuestos a la renta y de patentes en el Perú*. [1.ed. ?] [2.ed., corr. y aun.] Lima, Compañía de Impresiones y Publicidad, 1954. 167 p.; [3.ed., corr. y aun.] 1955. 167 p.

⁵¹ Ferrero, Rómulo A. *Comentarios acerca de los impuestos en el Perú; artículos publicados en el diario "La Prensa" en los meses de junio, julio y agosto de 1954*. Lima, Tip. Peruana, S.A., 1955. 35 p.

lished in *La Prensa*, which deal with the survey of Peruvian tax laws encouraged by the U.S. Economic and Financial Mission (Kemmerer Mission). Alvaro Belaúnde, a lawyer, has written an interesting book on the recurring problem of inflation and currency devaluation and its adverse effects on commercial enterprises. Within the context of this problem the author examines the role of taxation along with the related matters of amortization and valuation of capital assets.⁵² Dr. Raúl Barrios Orbegoso, in collaboration with Dr. Humberto Medrano Cornejo, produced an impressive dissertation on the doctrinal concepts of taxation and the systems and methods of their application.⁵³ Manuel Belaúnde Guinassi treats of the historical aspects and general principles of taxation, and the historical, logical, restrictive, and analogical methods of interpreting tax laws.⁵⁴ The work stresses the virtue of a codified body of laws covering the commercial, administrative, criminal, and other aspects of taxation. The author's sources and authorities appear at the end of the individual chapters. The most recent contribution to this field appears to be that of Teodoro Nichtawitz, lawyer, economist, and recipient of a master's degree from Harvard University. This volume quite comprehensively covers tax legislation, current as of 1970, and is meticulously annotated. Texts of pertinent laws, regulations, and cases are appended to the work.⁵⁵

Nationality and Aliens

In determining nationality, Peru follows the doctrines of *jus soli* and *jus sanguinis*. Article 4 of the 1933 Constitution provides that (a) "persons born in the territory of the Republic are Peruvians," (b) children of Peruvian parents, "whatever may have been the place of birth, provided they are domiciled in the Republic or register themselves in the civil register or in the appropriate consulate, are also Peruvians," and (c) "minors living in Peru who are the children of unknown parents" are considered as having been born in Peru.

There is a marked distinction between nationality and citizenship in Peru. Pursuant to article 84 of the Constitution, as amended by Law 12391 of September 7, 1955, citizens are those nationals of "adult age, married persons over

⁵² Belaúnde, Alvaro. *La depreciación monetaria, los impuestos y las empresas*. Lima [Tall. Gráficos de la Edit. Antonio Lulli, S.A., 1960] 206 p.

⁵³ Barrios Orbegoso, Raúl, and Humberto Medrano Cornejo. *Derecho Tributario*. [Lima, Edit. Sirius, 1966-] 1 v. [Contents v. 1: Teoría general del impuesto]

⁵⁴ Belaúnde Guinassi, Manuel. *Instituciones del derecho tributario*. Lima, Pontificia Univ. Católica [1967 ?] 215 p. (Colección Cincuentenario)

⁵⁵ Nichtawitz, Teodoro. *Impuesto de Timbres*. Lima, Edit. Economía y Finanzas [1970] 1 v.

eighteen years and those who are emancipated." Every citizen, therefore, must be a national, but not every national is a citizen.

Common law jurisdictions would find it interesting to know that an alien woman who marries a Peruvian national acquires the nationality of her husband, although a Peruvian woman married to an alien retains her Peruvian nationality unless she expressly renounces it. It should be noted, however, that before the adoption of the 1933 Constitution, the Civil Code of 1852 stipulated that a married woman, whether Peruvian or alien, assumed the nationality of her husband. Consequently, if a Peruvian woman married an alien before 1933, she would have automatically lost her nationality, but if such a marriage occurred after 1933, she would have to renounce her nationality to lose it.

In addition to the Constitution and the Civil Code, Peruvian legislation governing aliens may be found in the labor laws, tax laws, corporation law, colonization law, and a number of recent special laws and decrees which nationalize a variety of business enterprises and industries, some of which are described at random in this section and elsewhere in this guide. Treaties and other international agreements to which Peru is a signatory are other sources of alien regulations.

The basic law on admission of aliens is Supreme Decree of June 26, 1936, and the Immigration Regulation of May 15, 1937. Expulsion and nonadmission fall within the purview of Law 4145 of December 22, 1920. Requirements and procedure for naturalization are covered in Law 9148 of June 14, 1940. There are labor laws restricting the type of employment in which aliens may be engaged and the number of aliens who may be employed in national commerce and industry. Other laws limit alien ownership of real property. During the Second World War, emergency measures were enacted with respect to alien properties, activities, and enterprises. Full texts of these measures in both English and Spanish were published in 1943.¹

Various other decrees and regulations relate to registration, taxation, and identification cards. Some have been adopted expressly amending or repealing specific laws or certain provisions thereof, and others have been promulgated to either supplement or complement existing laws and may therefore be called satellite legislation. These different laws include, among others: Supreme Decree 159 of March 4, 1965,² which amends articles 4, 10, and 19 of the Immigration

¹ *Medidas de control sobre actividades comerciales y financieras de nacionales de países del eje.* [Measures adopted by the government of Peru during the present war conflict to control commercial and financial transactions of axis nationals.] Lima. American Embassy, 1943. 63, 62^a p. [Duplicate pagination]

² *El Peruano*, Mar. 9, 1959.

Regulation of 1937 concerning classification of nonimmigrants, entry and re-entry requisites, and visa extensions, respectively; Law 14680 of October 18, 1963,³ which allows foreigners to participate in elections for municipal mayors and councilmen—a most unusual piece of legislation for a country which appears to lean toward ultranationalism; Supreme Decree 16 of December 17, 1965,⁴ which amends article 5 of Supreme Decree 7 of April 30, 1965, regarding the permit and registration requirements for foreign fishing vessels operating in Peruvian “territorial waters”—a current subject of controversy in the United States; Supreme Decree 157 of March 4, 1965,⁵ which amends article 2 of Supreme Decree 5 of February 2, 1957, pertinent to registration of alien non-immigrants on a special register of the Superintendency of Taxes in Lima and in the Superintendency’s provincial registries. Registration, in this case, is required to facilitate an effective and systematic collection of Peru’s special alien tax; Supreme Decree 296–68–HC of August 14, 1968,⁶ regulating the change of status of nonimmigrants. This decree expressly amends articles 29, 30, and 58 of the 1937 basic regulation and other provisions of existing laws involving visa extension and fees for certain classes of nonimmigrants, alien identification cards, and increases from 200 to 500 soles for the fine for which an alien may be held liable if he fails to report a change of address or residence within the specified period of 30 days. The decree repeals all laws or parts thereof which are contrary to its provisions. Two of the most recent amendatory or complementary laws located as of this writing are: Supreme Decree 3–69–HE of February 10, 1970,⁷ regulating the migration of officials, managers, and professionals, and Decree-Law 18482 of November 17, 1970,⁸ prohibiting foreigners from increasing their stock in banking enterprises.

Source materials on nationality and aliens are scarce. The apparent paucity of legal literature on the subject has necessitated the inclusion here of a substantial number of papers or theses, including doctoral dissertations, written in compliance with university requirements.

An early work by Hildebrando Fuentes⁹ urges the passage of national legislation that would encourage and regulate immigration. The author provides ample justification for such a move and includes relevant draft laws.

³ *El Peruano*, Oct. 18, 1963.

⁴ *El Peruano*, Jan. 3, 1966.

⁵ *El Peruano*, Mar. 9, 1965.

⁶ *El Peruano*, Aug. 15, 1968.

⁷ *El Peruano*, Feb. 20, 1970.

⁸ *El Peruano*, Nov. 18, 1970.

⁹ Fuentes, Hildebrando. *La inmigración en el Perú. Proyectos de ley . . .* Lima, Impr. del Estado, 1892. 70 p.

Juan Angulo Puente Arnao wrote a brief doctoral dissertation at San Marcos University on the subject of immigration.¹⁰ A more extensive doctoral dissertation on the same subject, written by Mario del Río,¹¹ traces the development of Peruvian immigration policies and regulations. The work, which merited special praise from the author's law professors, has two appendixes containing pertinent national and foreign legislation.

The immigration and colonization laws in force in 1928 were compiled together with other material by the Ministerio de Fomento¹² of which the Bureau of Immigration and Colonization, created in 1927, was once a part.

Several works, printed between 1868 and 1943, involving the legal status of aliens and foreign corporations in Peru are either cited or described in the chapter on private international law. For the most part they involve conflict of law questions. Comparative law researchers should consult that chapter.

A pocket-sized compilation of laws, decrees, resolutions, and other provisions on admission, expulsion, naturalization, and treatment of aliens in Peru was published by Guillermo de Vivanco,¹³ without commentaries or annotations.

There are nine theses dealing with nationalization, naturalization, and expulsion of aliens that may also be consulted. Published between 1893 and 1942, these works were written by Lucas R. Oyague y Noel,¹⁴ Oscar Barrenechea y Raygada,¹⁵ Guillermo Galván,¹⁶ Wenceslao Silva Santistéban,¹⁷ Víctor Zamora Torres,¹⁸ Francisco Vetancourt Aristeguieta,¹⁹ Alberta Rey de Castro Romana,²⁰

¹⁰ Angulo Puente Arnao. Juan. *Inmigración y medios de adquirirla*. Lima. Ofic. Tip. de La Opinión Nacional, 1907. 49 p. [Thesis for the Univ. Mayor de San Marcos de Lima]

¹¹ Río. Mario E. del. *La inmigración y su desarrollo en el Perú*. Lima, Sanmartí y Cía., 1929. 315 p.

¹² Ministerio de Fomento. *Ley, reglamento, decretos y resoluciones supremas importantes expedidas hasta el año 1928 sobre terrenos de montaña, colonización é inmigración*. Lima, Impr. Torres Aguirre. 1928.

¹³ Vivanco, Guillermo de. *comp. Legislación peruana sobre extranjeros*. Lima, Impr. Americana, 1940. 129 p.

¹⁴ Oyague y Noel. Lucas R. *Nacionalidad*. Lima, 1893. [Thesis]

¹⁵ Barrenechea y Raygada. Oscar. *Expulsión de Extranjeros*. Lima, 1898. [Thesis]

¹⁶ Galván, Guillermo. *Naturalización plena y perfecta del extranjero*. Lima, 1901. [Thesis]

¹⁷ Silva Santistéban. Wenceslao. *El principio de la nacionalidad*. Lima, 1907. [Thesis]

¹⁸ Zamora Torres. Víctor. *Expulsión de extranjeros vagos*. Lima, 1917. [Thesis]

¹⁹ Vetancourt Aristeguieta. Francisco. *Nacionalidad, naturalización y ciudadanía*. Lima, 1929. [Thesis]

²⁰ Rey de Castro Romana, Alberta. *La nacionalidad de las personas jurídicas de derecho privado*. Lima, 1941. [Thesis]

Julio C. Villegas,²¹ and Angeles Córdova Régulo.²²

Abraham Padilla Bendezú, lawyer and diplomat, published an annotated work relating to the effect of registration and petroleum laws, among others, on aliens. Officially authorized by the Ministry of Foreign Relations, the work contains legislation up to 1954.²³

In 1958 Antenor del Pozo and Alfredo S. García González, the joint authors who issued the taxpayer guide series described in the preceding section, published an additional edition specifically treating of the December 1957 Alien Tax Law and its history.²⁴

To the credit of Judge Arturo Nieves Ayala is a very comprehensive publication on alien legislation covering the period up to 1960.²⁵ Thoroughly annotated, it includes, in addition to legislative texts, international treaties and agreements and administrative and judicial cases.

Transportation and Communications

LAND, WATER, AND AIR TRANSPORTATION

Until recently administration of highways, railroads, bridges, and docks came under the former Ministerio de Fomento, whereas transportation, postal, telephone, telegraph, and radio services fell within the jurisdiction of the Ministerio de Gobierno y Policía. Most of the regulations with reference to these matters took the form of administrative resolutions, circulars, concessions, and contracts.

Today, governmental control or regulation of both transportation and communications is lodged in one ministry, the Ministerio de Transportes y Comunicaciones. Its three bureaus—the Dirección General de Transporte Aéreo, the Dirección General de Transporte Acuático, and the Dirección General de Transporte Terrestre—are charged with overseeing air, water, and land transportation, respectively. Only one bureau—the Dirección General de Comunicaciones—is charged with supervising and regulating the entire field of communications.

²¹ Villegas, Julio C. *La nacionalidad y la legislación peruana*. Lima, 1941. [Thesis]

²² Córdova Régulo, Angeles. *La naturalización en el Perú*. Lima, 1942. [Thesis]

²³ Padilla Bendezú, Abraham, ed. *Inmigración y extranjería vigente*. Lima, Distribuidores: Libr. J. Mejía Baca, 1954. 153 p.

²⁴ Pozo, Antenor del, and Alfredo S. García González, eds. *Extranjería; nueva Ley de Impuesto de Extranjería (12866) y procedimientos para su aplicación*. Lima. Ediciones Guía del Contribuyente [1958] 67 p.

²⁵ Nieves Ayala, Arturo, ed. *Los extranjeros ante la ley peruana; compilación de toda la legislación vigente referente a extrajeros, incluyendo los tratados internacionales, jurisprudencia de los tribunales, de la Superintendencia General de Contribuciones, y de los registros públicos*. Lima [1960] 519 p.

An early compilation of laws and regulations concerning the various agencies under the Ministerio de Fomento includes material on railroads, highways, docks, wharves, and bridges and was carefully edited by Dr. Angulo Puente Arnao.¹

Construction of railroads or highways of any length has been hindered by Peru's unique topography. Three main highways traverse Peru. The most important of these is the Peruvian segment of the Pan American Highway, the lengthy road connecting North and South America. Construction of a fourth major highway, the Carretera Marginal de la Selva (Marginal Forest Highway), began in the mid-sixties and may be nearing completion as of this writing. There are two major railway systems, the Central Railroad and the Southern Railroad.

The first system, built in the 1870's by the American engineer Henry Meiggs, is the most spectacular and expensively built railroad in Latin America. It runs from coastal Callao to Lima and continues on to the cordillera and the central sierra region. In 1871 Mr. Meiggs supervised a comprehensive edition of Peru's railroad legislation, which includes contracts, concessions, grants, and other documents in addition to pertinent laws and decrees enacted from 1826 to 1871.²

A government contract made in 1890 with a British company, the Peruvian Corporation, gave the British control over the two major rail systems. Besides the contractual terms, government regulations,³ published from time to time, provided supplementary or complementary guidelines.

In addition to pertinent provisions of the Commercial Code, Law 2938 of December 9, 1918,⁴ was subsequently adopted to regulate contracts with and grants to railroad companies. In mid-1971, as a result of a debt recovery action, the state-owned Industrial Bank of Peru took over the management and operation of the British-funded railway systems, pending their sale in a public auction. In late 1972 newspaper reports in the United States indicated that the military government would probably offer the winning bid.

Highway legislation is the topic of a law school thesis submitted to San

¹ Angulo Puente Arnao, Juan. *comp. Compilación de leyes, reglamentos y resoluciones de carácter general vigentes del Ministerio de Fomento y sus dependencias*. Lima, Impr. La Industria, 1907. 2 v.

² Meiggs, Henry, ed. *Colección de leyes, decretos, contratos y demás documentos relativo a los ferrocarriles del Perú*. Lima, Impr. del Estado, 1871, 3 v. in 1.

³ *Reglamento general de ferrocarriles*. Ed. oficial. Lima, Impr. del Estado, 1903. 36 p.
Reglamentos de ferrocarriles. Ed. oficial. Lima, Impr. La Industria, 1904. 52 p.
Reglamento general de ferrocarriles. Ed. oficial. Lima, Impr. del Estado, 1908. 169 p.

⁴ Ley 2938. Ferrocarriles: quedan sujetos las empresas a la vigilancia de las autoridades . . . y los reglamentos respectivos. In *Anuario de legislación peruana (1918)*. p. 140-141.

Marcos University by Eduardo Iriarte Valcárcel. It was subsequently issued in a commercial edition.⁵

A law on compulsory conscription for road work was adopted in 1926.⁶ Carlos Oyague y Calderón's historical treatment of comparative legislation of the *corvée* or *conscripción vial* published in 1915⁷ provides interesting background to the 1926 law.

Three works relating to the operation of motor vehicles on the public roads and highways within the national territory merit inclusion in this section. The first, by Manuel Buttá,⁸ is a 120-page, pocket-sized pamphlet on traffic regulations and other rules concerning automobiles. The second, by Augusto Barreda Bedoya,⁹ a public prosecutor, is a two-volume comprehensive annotated work on the same subject. The work covers all relevant provisions from the Constitution, the Penal and Civil Codes, the procedural codes, and jurisprudence pertinent to government agencies and officials charged with implementing them, liability for traffic accidents or their prevention, traffic violations, and regulations, among other matters. The third, by Lt. Col. Alberto Ponce de León,¹⁰ appears to be an even more extensive work. Apparently, this collection consists of at least six volumes. Unfortunately, as of this writing, the Library of Congress holds only the sixth volume of this series in its collections. This particular volume deals with 19 regulations, 70 administrative resolutions, and statutes adopted through 1966. A notation in the volume indicates that it is approved as the official government handbook on transit matters.

Most literature on Peru's railroads and highways is not treated from a legal standpoint and has therefore been excluded from this analysis.

Air service was initiated in Peru in 1928 and at first was governed by general principles of international law and some pertinent provisions in the Peruvian Civil and Commercial Codes, particularly the provisions on maritime law in

⁵ Iriarte Valcárcel, Eduardo. *La legislación de caminos en el Perú*. Lima, La Industria [1931?] 114 p.

⁶ *Ley no. 4113 y reglamento sobre conscripción vial*. Lima, Orellana y Cía., 1926. 10 p.

⁷ Oyague y Calderón, Carlos. *La conscripción vial, o servicio obligatorio de caminos*. Lima, Impr. del Centro Editorial, 1915. 33 p.

⁸ Buttá, Manuel. *Tránsito vehicular, prontuario de normas para la conducción de vehículos en las vías públicas, del territorio nacional. Para conductores de vehículos policías y demás personas interesadas al respecto*. [1.ed.?] 2.ed., complementada con instrucciones referentes al funcionamiento del automóvil. [Lima] Emp. Gráf. T. Scheuch [1945] 120 p.

⁹ Barreda Bedoya, Augusto, ed. *Accidentes de tránsito: legislación, jurisprudencia, concordancias, doctrina*. Lima, Impr. "Carrera," 1959-60. 2 v.

¹⁰ Ponce de León, Alberto, ed. *Legislación de tránsito; aprobada y declarada de uso oficial por Resolución suprema de 6 de febrero de 1967*. Lima, 196 v. [Imprint date of v. 6 is 1967]

the Commercial Code. It was soon apparent, however, that aviation, by its nature, requires special attention and regulations.¹¹

The nationality and registration of ships, rules to be followed in departure and landing at airports, books and documents to be kept by the pilot, and regulations on radio, lights, signals, etc., with reference to both commercial and civil aviation, became the subject of a basic law adopted December 18, 1933. In September 1937 the Conferencia Técnica Interamericana de Aviación met in Lima, giving Peru a chance to demonstrate her growing interest in this field. A special ministry, the Ministerio de Aeronáutica, was eventually created under Supreme Decree of February 26, 1943.

In 1944 Peru sent representatives to the Convention on International Civil Aviation, which was held in Chicago during November and December. Her ratification of this convention was effected in a legislative resolution of January 1, 1946,¹² and was deposited with the U.S. Department of State on April 18, 1946.¹³

A naval commander, Don León Garaycochea, included aeronautical legislation in his admirable collection of naval legislation.¹⁴ Beginning in 1943, he issued additional volumes semiannually, devoted exclusively to aviation, as part of this serial collection. Seven volumes appeared up to 1946.¹⁵

Carlos de la Jara, former commandant of the Peruvian Air Force and director-general of Civil Aeronautics, published a monograph under the auspices of the Inter-American Technical Conference on Aviation of 1937.¹⁶ Another of his works sets forth Peru's official policies on aviation matters. A three-page bibliography includes mostly foreign literature. A similar monograph from the same pen appeared 10 years later.¹⁷ This work is based on a conference sponsored by the

¹¹ *Reglamentación de la aviación comercial y civil de la República*. La Punta, Tall. Tip. de la Escuela Naval del Perú [1929] 71 no. 1.

¹² Resolución legislativa no. 10358 del 1° de enero de 1946 aprueba la Convención de Aviación Civil Internacional. In *El Peruano*, Feb. 8, 1946, no. 1546.

¹³ *United States Department of State Bulletin*, Aug. 18, 1946.

¹⁴ Garaycochea, León, ed. *Legislación naval y de aviación; recopilación de las leyes, resoluciones legislativas, reglamentos, decretos, resoluciones supremas y ministeriales, órdenes generales, circulares, etc. correspondientes a los dos ramos; y leyes, reglamentos y decretos de carácter general . . .* Ed. autorizada. Lima, Impr. Segrestán, 1919-46. 18 v. [v. 1-4 and v. 16-18 have title: *Legislación naval; recopilación de las leyes . . .*]

¹⁵ ———. *Legislación de aeronáutica; recopilación de leyes, resoluciones legislativas, reglamentos decretos, resoluciones supremas y ministeriales, órdenes generales, circulares etc., correspondientes al ramo; y leyes, reglamentos y decretos de carácter general*. Obra autorizada oficialmente. Lima, Impr. Segrestán. 1943-46. 5 v.

¹⁶ Jara, Carlos A. de la. *Derecho Aeronáutica*. Lima, 1937. 127 p.

¹⁷ ———. *Contribución al estudio de la doctrina aeronáutica civil del Perú [Conferencia sustentada en la Academia de Guerra Aérea]* Lima [Empresa Edit. Riniac, S.A.] 1947. 72 p. (Academia de Guerra Aérea. Ciclo de información. 1947)

Peruvian War College and deals primarily with the international conferences on aviation and Peru's official participation and adherence. It incorporates the laws on the Dirección General de Aviación Civil, which was an agency under the Ministerio de Aeronáutica, and on the Peruvian Corporation of Airports and Commercial Aviation. A diagram of the ministry and its agencies is provided.

An excellent article, found in an issue of the official journal of the Lima bar association,¹⁸ urges more adequate legislation from Peru in this particular field and compares the progress made in other countries. The author, Julio César Villegas, was president of the Peruvian Institute of Aeronautical Law, an institution organized solely for the promotion and development of definitive air laws and policies for Peru.

In September 1946, Gen. Fernando Melgar published his draft laws on civil aeronautics¹⁹ for Peru which he had originally presented to the Chicago convention of 1944. A 39-page *exposición de motivos*, or statement of purposes, precedes the proposed text of the laws which, according to the author, is the result of 11 years' study and research in Brazil, Argentina, and Uruguay, and active participation in relevant international conferences.

A monographic work on Peruvian air laws by Alfredo Gildemeister M.,²⁰ an active member of the Peruvian Institute of Aeronautical Law, has been hailed as one of the few major reference tools in this area by a Peruvian author. It contains principal theories, doctrines, and regulations on aviation and the national air space. Specifically, it treats of such topics as aerial transportation, contracts and real rights over aircraft, its nationality, insurance, and personnel. Until its appearance, law students, lawyers, and even authors had to rely mostly on Spanish, Chilean, Uruguayan, and Argentine legal authorities. This contemporary work is the first to deal with the new regulation on civil aeronautics, Supreme Decree 22 of December 26, 1963.

In 1965 a three-volume compilation of the world's air laws²¹ was prepared by the Library of Congress for Senator Warren G. Magnuson, chairman of the Committee on Commerce of the United States Senate. The second volume of this comprehensive work contains the English text of Peruvian Supreme Decree 22 of December 26, 1963, translated from the official Spanish text which ap-

¹⁸ Villegas, Julio César. "Consideraciones sobre el derecho aeronáutico peruano." In *La Revista del Foro*, July-Sept. 1944, p. 416-430.

¹⁹ Melgar, Fernando. *Ante-proyecto de ley de aeronáutica civil. Exposición de motivos*. Lima [Impr. Torres Aguirre, S.A.] 1946. 88 p.

²⁰ Gildemeister M., Alfredo. *Elementos de derecho aeronáutico*. Lima [Edit. Universitaria] 1964. 152 p. (Biblioteca de Derecho)

²¹ U.S. Library of Congress. Law Library. *Air laws and treaties of the world*. Washington, U.S. Govt. Print. Off., 1965. 3 v.

peared in a February 1964 issue of *El Peruano*.²² Soon after the publication of this compilation, however, Peru adopted Law 15720 of November 11, 1965,²³ as its new Civil Aeronautics Law. Later, the corresponding regulation to this law was approved under Supreme Decree 16 of December 28, 1965,²⁴ which expressly repeals Supreme Decree 22 of 1963.

TELECOMMUNICATIONS

The Peruvian government has always attempted to maintain a state monopoly over communication services, e.g., postal, telegraph, and wireless services, either by operation of these services by the government itself or by a private corporation operating under a negotiated contract, such as was entered into in the 1920's with the Marconi Wireless Telegraph Company.

This monopolistic policy is clearly reflected in the recent rash of nationalization measures which have affected not only the field of communications but other aspects of the Peruvian economy. In 1969 the Compañía Peruana de Teléfonos, S.A. (Peruvian Telephone Company), a subsidiary of the U.S.-owned International Telephone and Telegraph Corporation (ITT), was nationalized "under terms of the Law and under conditions that will guarantee the Nation's sovereignty over its communication services. . . ." ²⁵ The nationalizing decree-law requires that ITT reinvest a great portion of the purchase price paid by the government of Peru in activities related to the country's economic and social development. Following the nationalization of the Peruvian Telephone Co., the Empresa Nacional de Telecomunicaciones del Perú (ENTEL) was created, pursuant to Decree-Law 17881 of November 7, 1969,²⁶ to operate the telephone company and all other national telecommunication services. Earlier, on January 30, 1969, a decree ²⁷ was promulgated providing for the reorganization of the postal and telecommunications services of the country. Eventually, the General Law on Telecommunications was adopted under Decree-Law 19020 of November 9, 1971,²⁸ to serve as the charter governing the entire field of communications, especially radio and television broadcasting. The law declares that telecommunications services are a public necessity and essential to national security and

²² *Ibid.*, v. 2, p. 2041-2081.

²³ *El Peruano*, Nov. 22, 1965.

²⁴ *El Peruano*, April 27-28, 1966.

²⁵ Decree-Law 17860 of Oct. 28, 1969. In *El Peruano*, Oct. 29, 1969.

²⁶ *El Peruano*, Nov. 8, 1969.

²⁷ *El Peruano*, Jan. 31, 1969.

²⁸ *Leyes y Resoluciones*, 1971. v. 18, p. 1077-1105.

should therefore be controlled by the state. Furthermore, the law stipulates that commercial television broadcasting may only be availed of by public corporations or associated state enterprises, the number of imported radio and television programs be limited, and government broadcasting of cultural and educational programs be increased.

Land Laws and Agrarian Reform

Following centuries of inadequate agricultural systems and inequitable land distribution patterns, contemporary Peruvian economists, lawyers, and statesmen have launched a number of reform programs through legislation. Until the forties, agriculture attracted little government concern, and programs relating to this area were administered from a miniscule office within the now defunct Ministerio de Fomento. Under Law 9711 of January 2, 1943,¹ however, the traditional importance of land and agriculture in Peru was finally recognized by the creation of a separate and independent government ministry, the Ministerio de Agricultura, to administer all aspects of government effort in these matters.

From the late twenties to the early fifties, reference materials on agriculture and such related fields as homesteads, cattle raising, cooperatives, forestry, colonization, and a host of agrarian questions include two compilations issued officially by the Ministerio de Fomento,² which contain legislation on public lands, colonization, and immigration and a paralegal study, contributed by Abelardo Solís,³ tracing the development of agrarian problems since the colonial regime with suggestions for solutions and comparative references to agrarian reform programs in other countries.

Some good law school and doctoral theses which deal with agrarian matters are listed below without further description.⁴ Two exceptional theses are a

¹ *El Peruano*, Jan. 12, 1943.

² *Ley, reglamento, decretos y resoluciones supremas importantes, expedidas hasta el año 1928, sobre terrenos de montaña, colonización é inmigración*. Lima Impr. Torres Aguirre, 1928. 240 p. (Ministerio de Fomento)

Recopilación de las disposiciones, dadas sobre terrenos de montaña, colonización é inmigración, contiene: leyes, reglamentos, decretos y resoluciones supremas vigentes. Lima. Impr. Edo. Rávago, 1929. 239 p. (Ministerio de Fomento)

³ Solís, Abelardo. *Ante el problema agrario peruano*. Lima. Impresiones Enc. Perú, 1928. 228 p.

⁴ Solar, Emilio del. *Tierras públicas y cuestiones agrarias*. Lima, 1918. [Doctoral thesis]

Ugarte, César Antonio. *Los antecedentes históricos del régimen agrario peruano*. Lima, Libr. é Impr. Gil. 1918. 116 p. [Doctoral thesis]

Vidal Olivos, Justiniano. *Sobre el movimiento rural cooperatista social y legislativo y sobre su adaptación en el Perú*. Lima, 1918. [Doctoral thesis]

Luna Cartland, Guillermo. *Orígenes de la propiedad agraria en el Perú*. Lima, 1920. [Thesis]

scholarly monograph by René Boggio Amat y León,⁵ consisting of historical antecedents, rural legislation, suggestions for codification, and comparative law analysis, and the thesis by Dr. Alberto Ulloa y Sotomayor,⁶ internationalist and statesman, in which a "systematic" rural legislation is proposed.

A collection of forestry laws, decrees, and resolutions enacted within this century up to 1951 was compiled and edited by J. Alberto Barreda for the Ministerio de Agricultura.⁷

Throughout Peru a few individuals possess most of the land. In present-day Indian communities, which have been legalized and given special rights and protection since 1920, the precolonial communal landholding system still exists. On most communal lands, however, communal members do not possess equal landholdings, and some members, in fact, none at all.

Within the last two or three decades the government has seriously attempted to devise a balanced agrarian reform program. Víctor Modesto Villavicencio, charged with researching Peru's agrarian problems by Dr. Manuel Cisneros Sánchez, president of the Council of Ministers during President Manuel Prado's term, approached the task with a brief study involving the leasehold practices of approximately 20 countries, including Germany, France, Guatemala, the Philippines, and Mexico. His study also contained a proposal for a draft law for

Peixoto, Sebastián E. *Bases de una legislación forestal*. Lima, 1929. [Thesis]

González M., José Domingo. *El problema de la tierra en el Perú*. Lima, 1930. [Thesis]

Hernández, Félix R. *El régimen jurídico de las tierras públicas a través del derecho peruano*. Lima, 1930. [Thesis]

Medina Pinón, Hernán. *Nuestra legislación de terrenos de montaña*. Lima, 1930. [Thesis]

Ubillús, Julio C. *Legislación sobre tierras públicas en el Perú*. Lima, 1930. [Thesis]

Silva Rocha, Maximiliano. *Formación de la pequeña propiedad agraria en la sierra*. Lima, 1931. [Thesis]

Razzeto, Mario. *Glosa de la Ley no. 1220, sobre terrenos de montaña y de las disposiciones que la complementan*. Lima, 1932. [Thesis]

Ríos, José Antonio. *El homestead rural en el Perú*. Lima, 1932. [Thesis]

Armas Méndez, Vicente. *Nuestro régimen agrario y explotaciones agrícolas respectivas*. Lima, 1933. [Thesis]

Cuba Caparó, José Lucas. *El desenvolvimiento de la propiedad rural indígena en el Perú*. Lima, 1935. [Thesis]

Villón, Pedro Cristóbal. *Cooperativas Territoriales*. Lima, 1935. [Thesis]

Terreros, Jacinto. *Las cooperativas agrícolas en el Perú*. Lima, 1943. [Thesis]

Cuadros, Carlos Ferdinand. *El "arriendo" y la reforma agraria en la provincia de La Convención*. Cuzco, 1949. 82 p. [Thesis]

⁵ Boggio Amat y León, René. *Fundamentos del derecho real*. Lima, Cía. de Impresiones y Publicidad, 1943. 179 p. [Thesis]

⁶ Ulloa y Sotomayor, Alberto. *Lineamiento de una legislación rural*. Lima, Tip. "La Prensa." 1914. 149 p. [Thesis]

⁷ Barreda, J. Alberto, ed. *Legislación forestal del Perú, recopilación de leyes, decretos y resoluciones*. Lima [Tall. del Departamento de Propaganda, Biblioteca y Publicaciones, Ministerio de Agricultura] 1952. 109. i p.

Peru.⁸ Years later Dr. Villavicencio again chose agrarian reform as a theme.⁹ This material, however, has yet to be acquired by the Library of Congress, and consequently it is impossible to say whether the later work treats of simple proposals or deeper commentaries on the eventual law, discussed below.

In 1958 a revisory committee, the Comisión para la Reforma Agraria y la Vivienda (Commission on Agrarian Reform and Housing), was created, composed of Pedro G. Beltrán, chairman (later appointed a Cabinet minister), Ernesto Alayza Grundy, vice chairman (who took charge of the committee's responsibilities after Beltrán's Cabinet appointment), and as members, Carlos Moreyra y Paz Soldán, Rómulo A. Ferrero, José Antonio Saco Miró Quesada, Edgardo Seoane, Alberto Eduardo de Amat, Jorge M. Zegarra L., and Luis de los Heros. The group began labor on a "radical" agrarian law for Peru. A draft¹⁰ was completed, and in 1960 the committee's vice chairman formally presented it, together with a memorandum of purposes and objectives, to President Manuel Prado. Unfortunately, before any action could be taken, President Prado was overthrown. The draft received heavy public criticism and debate and is the subject of an article-by-article critical analysis published in 1961 by Octavio Diez Canseco Bernalles.¹¹

When Fernando Belaúnde Terry was elected president in 1963, one of his first acts was to present the country with an agrarian reform plan with a vision towards "new directions:" Law 15037 of May 21, 1964. The law established the agencies and bases necessary to expropriate landed estates and redivide them into small and medium-sized properties. Many types of lands, however, were exempted, and strong political opposition made full implementation very difficult. Two principal works which may be consulted on this particular agrarian reform law are that of Elio Pimentel Benites¹² and a compilation officially authorized

⁸ Villavicencio, Víctor Modesto. *El problema agrario peruano y el estatuto agrario*. Lima [Tall. Gráficos Junin] 1958. 63 p.

⁹ ———. *Reforma agraria y estatuto agrario*. Lima, Edit. Junin, 1958. 63 p.

¹⁰ Comisión para la Reforma Agraria y la Vivienda. *La reforma agraria en el Perú. Documentos*. Lima, Impr. Casa Nacional de Moneda, 1959. 2 v. [Documents contained in v. 1 are: *Investigación sobre distribución y tenencia de la tierra agrícola*, and *Unidades de explotación en programas de reforma agraria*. Documents contained in v. 2 are: *La reforma agraria y las comunidades de indígenas*, by Dr. Antonio Quintanilla Poulet; *La estructura social y económica de las comunidades indias de la región andina*, by Alfred Métraux, and *Censo estimativo de comunidades de indígenas*. These documents were considered by the Commission on Agrarian Reform and Housing in the preparation of their 1960 draft law.]

———. *La reforma agraria en el Perú; exposición de motivos y Proyecto de ley*. Lima [Tall. Gráficos P.L. Villanueva, S.A.] 1960. 231 p.

¹¹ Diez Canseco Bernalles, Octavio. *La falsa reforma agraria*. [Lima, 1961] 165 p.

¹² Pimentel Benites, Elio, ed. *Concordancias a la Ley de Reforma Agraria del Perú, no. 15037 de 21 de mayo de 1964*. [Trujillo, Libr. y Edit. Bolivariana, 1965] 332 p.

for publication by the government.¹³ The former gives the full text of the law and regulations pertinent thereto, carefully annotated with excerpts from related provisions of other decrees, the Constitution, and the civil and procedural codes. The latter is a comprehensive collection of land laws, decrees, or resolutions through 1965. A second volume was apparently printed but is unavailable at this writing. Both works include the texts of the Law on Waters and the Mining Code, subtopics which will be treated separately in the following sections. Another work published following the adoption of the 1964 Law is that by Luis F. de la Puente Uceda¹⁴ in which the whole question of agrarian reform is exegetically treated within the context of Peruvian, as well as foreign (including Soviet Russia's), experience.

Currently Decree-Law 17716 of June 24, 1969,¹⁵ is the controlling Agrarian Law expressly repealing that of 1964. Provisions of this decree-law are bound to generate greater social and economic consequences than any of some 60 preceding laws on land, settlement, and agrarian matters. Unlike the previous Law of 1964, it allows few exemptions. According to the new law, the maximum individual holding on the costa is fixed at 150 hectares (there are 2.47 acres to a hectare); in the sierra, the maximum ranges from 15 to 55 hectares for irrigated land and double this range for unirrigated land. For pasturelands and forests, the limit is 1,500 hectares. Any property in excess of the stipulated limits is to be expropriated, subdivided, and redistributed, except for efficiently operated estates like the sugar plantations which would instead be converted into workers' cooperatives. To implement the objectives of these cooperatives, the Oficina Nacional de Desarrollo Cooperativo (National Office of Cooperative Development) has been created. Government credit or financing is available under established guidelines. A new and amply funded agency, the Dirección General de Reforma Agraria y Asentamiento Rural (Bureau of Agrarian Reform and Rural Settlement) has been created and made a part of the Ministry of Agriculture. Agrarian reform courts have been established and their decisions made nonappealable. Any person who attempts to violate the provisions of the 1969 Law are subject to trial by a military tribunal. American newspapers have reported since 1969 that serious and positive steps have been taken toward total implementation of the aforementioned revolutionary measures. Dr. Jorge

¹³ *Legislación sobre reforma agraria*. [Lima] Publicaciones "Emi," 1965- 1 v.

¹⁴ Puente Uceda, Luis F. de la. *La reforma del agro peruano*. Lima, Ediciones Ensayos Sociales [1966] 233 p.

¹⁵ *Reforma agraria; Decreto Ley no. 17716*. Lima. Edit. Mercurio [1969] 61 p.

Eugenio Castañeda shows in a recent work¹⁶ how some of these measures and other innovations have, in effect, modified certain provisions of the Civil Code of Peru. The most recent full text of the Agrarian Law bears a 1972 imprint date.¹⁷

Water Laws

Legal controls on the use, conservation, and distribution of water have always been significant factors in the development and growth of Peru. In the coastal areas of the country where rainfall is very scant the year round, agricultural productivity depends largely on elaborate and effective irrigation schemes.

Today agricultural products rank second only to the fishmeal industry as a source of export revenue. The preeminence of the fishing industry, now reputed to be the biggest in the world, has made water legislation doubly significant for Peru.

Fishing, which used to be regulated generally under the terms of the Water Code of 1902, is now covered by a special law decreed in 1971, the General Law on Fishing. This subject will be dealt with at length in the chapter on public international law, under the subheading territorial waters (see also industrial and investment legislation in the chapter on commercial law).

After independence, Spanish colonial laws remained in force in Peru for many years. The Reglamento de Cerdán of 1793, incorporating many previous water laws and decrees, was reaffirmed and declared in effect by an August 4, 1841, decree of President Gamarra. It was enforced in all Peruvian jurisdictions with the exception of the Departamento de Trujillo where Spanish ordinances, dated 1700 and credited to Padre Saavedra of Trujillo, were still in force.

Dr. Enrique Patrón, a Ministry of Justice official at the beginning of the century, compiled all the Spanish and local laws and regulations, including the Ordenanzas de Cerdán, which were in force in 1901.¹

The early attempts to adopt a code or national law on waters were not brought to fruition until 1899 when a committee was created for the specific purpose of studying, revising, drafting, and codifying all laws on the subject. The com-

¹⁶ Castañeda, Jorge Eugenio. *Legislación agraria: Texto único concordado del Decreto-ley no. 17716, análisis de las modificaciones que introduce en los diversos libros del Código Civil, jurisprudencia del Fuero agrario*. Lima [Amauta] 1971. 124 p.

¹⁷ *Texto único de la Ley de Reforma Agraria; Decreto ley no. 17716*. Lima [Oficina Nacional de Información, 1972] 114 p.

¹ Patrón, Enrique, comp. *Leyes, decretos, resoluciones, reglamentos y circulares vigentes . . . Tomo I, Legislación de aguas*. Ed. oficial. Lima, Impr. Torres Aguirre, 1901. 1,049 p. (Ministerio de Justicia)

mittee's labors resulted in a draft² which was submitted to and approved by the Congress. Finally on February 24, 1902, the approved draft was promulgated as Peru's first Código de Aguas (Water Code).³ In the year of its adoption, the text was reproduced twice,⁴ together with the corresponding regulations. One of these reproductions is partially annotated by Manuel Santos Pasapera and was intended to expunge from the text previously made typographical errors. The Code pertains to all kinds of water—running, still, subterranean, surface, and even rainwater—and deals with such specific subjects as accretion, deposits, flood protection, drainage, servitudes, water rights, irrigation, public water supply, policing, and community control.

After the Code's adoption, Dr. Ramón Costa y Caverro, at the time a government official directly involved with enforcing its provisions, contributed the bulk of Peru's legal literature on waters. His works,⁵ covering a span of 23 years, treat all aspects of water legislation embodied in the Code and all other supportive rules and regulations. Furthermore, they are annotated with administrative and judicial decisions in point. Supplementing Dr. Costa's materials are a few theses written during the same period by law students at San Marcos University.⁶

² *Proyecto de ley de aguas formulado por la comisión nombrada por suprema resolución de 19 de septiembre de 1899*. Lima, Impr. de "El Nacional," 1899. 443 p.

³ *Código de Aguas del Perú*. Ed. oficial. Impr. del Estado, 1902. 48 p.

⁴ *Código y Reglamento de Aguas del Perú con leyes y decretos concordantes*. Ed. oficial. Lima, Impr. del Estado, 1902. 148 p. [Cover title: *Legislación vigente sobre aguas en el Perú*.]

Santos Pasapera, Manuel. *ed. La Ley de Aguas. Con sus antecedentes, expurgada de errores tipográficos y con algunos comentarios*. Lima, Impr. y Libr. de San Pedro, 1902. 256 p.

⁵ Costa y Caverro, Ramón. *El Código de Aguas. Breves notas sobre su aplicación*. Lima, Impr. del "Boletín de Ciencias, Artes, é Industrias," 1916. 132 p.

———. *El Código, leyes, reglamentos, decretos y resoluciones sobre aguas con algunas notas*. 2.ed. Lima, Impr. La Equitativa, 1921. 255 p.

———. *Concesión de aguas para usos industriales y explotación de yacimientos petrolíferos. Leyes, decretos y resoluciones pertinentes, comentadas y explicadas con sus respectivas formularios*. Lima, Tip. La Equitativa, 1922. 72 p.

———. *Legislación de aguas; las administraciones de aguas de regadío; el Consejo Superior de Aguas . . .* Lima, Tip. La Equitativa, 1934. 74 p. (Biblioteca de obras administrativas)

———. *Legislación de aguas, agricultura y ganadería*. Lima, Tip. La Equitativa, 1935. 1 v. (Biblioteca de obras administrativas)

———. *Legislación de aguas é irrigación anotados y concordados . . .* Lima, Revista Mensual del Comercio del Perú, 1939. 1,272 p.

⁶ Velazco, Gil. *El agua en el Perú*. Lima, 1917. [Doctoral thesis]

Nicolini, Juan Vicente. *La policía de las aguas en el Perú*. Lima, 1919. [Doctoral thesis]

Arce Miranda, Teodosio. *La política de irrigación y el problema agrario indígena en el Perú*. Lima, 1931. [Thesis]

Penagos, Juan Pedro. *Nuestra legislación de aguas. Su reforma y unificación*. Lima, 1936. [Thesis]

Espinoza Miranda, Adeodato. *Régimen legal de irrigación en el Perú*. Lima, 1939. [Thesis]

The general administration of Peruvian waters under the 1902 Code was vested directly in the Dirección de Aguas é Irrigación (Bureau of Waters and Irrigation), an office within the Ministerio de Fomento, and the resolution of water disputes and corollary problems fell within the jurisdiction of an administrative body, the Consejo Superior de Aguas (Superior Council on Waters). The organization and functions of this council may be found in an official 1932 publication.⁷

The Water Code of 1902, as amended, was in force until 1969. Until its repeal, it was the subject of a few more annotated contributions, all updated with complementary legislation, by Manuel A. Chávez Michieli,⁸ Carlos Rodríguez Escobedo,⁹ and J. V. Fajardo.¹⁰ Fajardo contributed two works. The latest, appearing in 1965, correlates the provisions of the 1964 Agrarian Reform Law with those of the Water Code concerning irrigation and other matters.

In 1967 a commission was created to draft a new water code. Thus far the available data gives no positive information on the progress or results of the commission's work. It is certain, however, that exactly one month after the passage of the 1969 Agrarian Reform Law, Decree-Law 17752, entitled General Law on Waters,¹¹ was promulgated on July 24, 1969, directly repealing, under its article 146, the Water Code of 1902, as well as all other decrees or laws inconsistent therewith. According to the declaration of principles and, more importantly, article 1 of the law itself, the state has inalienable and imprescriptible sole dominion or ownership over its waters, thus abolishing or revoking all private rights. The jurisdictional scope of the new law, pursuant to article 4, extends to all forms of water, including the sea up to 200 miles offshore, rain, snow, glaciers, rivers, underground water, and sewage. Priorities for water use

⁷ Ministerio de Fomento. Dirección de Aguas é Irrigación. *Decretos-leyes relativos a la organización del Consejo Superior de Aguas y administradores técnicos* . . . Lima, Tip. La Equitativa, 1932. 37 p.

⁸ Chávez Michieli, Manuel A., ed. *Legislación de aguas é irrigación, compilada, anotada y concordada*. Lima [Impr. "Yañez"] 1954. 276 p.

⁹ Rodríguez Escobedo, Carlos, ed. *Código de Aguas; concordancias de legislación y jurisprudencia, leyes y reglamentos de irrigación. Anotado y concordado con la Constitución del Estado, Código Civil* . . . *Formularios para denuncios de aguas y tierras a irrigar, formularios de avisos de aguas*. Arequipa, 1956. 463 p.

¹⁰ Fajardo, Jesús Víctor, ed. *Código de Aguas é Irrigación; interpretado, comentado y concordado de acuerdo con el nuevo Código Civil y con las últimas leyes y reglamentos de irrigación; contiene además: La organización del Consejo Superior de Aguas; Reglamento General para el Uso de las Aguas de Regadío* . . . Lima, Edit. Mercurio [195-?] 291 p.

———. *Código de Aguas é Irrigación (con el reparto de tierras por mandato de la Ley no. 15037 y los Decretos Supremos nos. 24 y 26, reglamentando su adjudicación y distribución de aguas*. Lima, Edit. Mercurio [1965] 188 p.

¹¹ *Ley General de Aguas, Decreto Ley 17752*. Lima, Edit. Mercurio [1969 or 70] 32 p.

established under article 27 follow this sequence: population, animals, agriculture, power, industry, mining, and others that the government may allow in accordance with certain guidelines. Under the former law, water charges were based on area irrigated; in the new law, charges are based on water volume used. This arrangement provides farmers with the proper incentive to prevent wastage.

Following the administrative reorganization effected by the revolutionary government which brought the abolition of the Ministerio de Fomento, jurisdiction over waters has been assigned to the Ministerio de Agricultura in which a new bureau called Dirección General de Aguas, Irrigaciones y Catastro (Bureau of Waters, Irrigation, Survey, and Land Registration) has direct administrative responsibilities over waters. Under the General Law on Waters, i.e., article 135, the Consejo Superior de Aguas has been reduced to a consultative or advisory body to the presidency, and a new agency, the Administración Técnica de Distrito de Riego (Technical Administration for Irrigation), has been created under article 133 to resolve disputes arising from the application or interpretation of the law. The decisions of this agency are appealable to the Minister of Agriculture, but, under article 134, the minister may delegate part or all of his functions in this regard to the appropriate Directores de Zonas Agrarias (Agrarian District Directors).

Since the promulgation of the General Law on Waters, the following supplementary decrees have been enacted: Supreme Decree 261-69-AP of December 12, 1969,¹² adopting the regulations to titles I, II, and III of the General Law; Supreme Decree 41-70-A of February 10, 1970,¹³ amending regulation to title III concerning the use of water for irrigation purposes and the proper use of water resources; and Supreme Decree 397-70-AG of November 6, 1970,¹⁴ regarding irrigation in urban expansion zones. The latest decree to be located at this writing is Decree-Law 18735 of January 19, 1971,¹⁵ which amends article 135 of the General Law on Waters regarding the membership of the Consejo Superior de Aguas.

¹² *El Peruano*, Dec. 15, 1969.

¹³ *El Peruano*, Feb. 25, 1970.

¹⁴ *El Peruano*, Nov. 10, 1970.

¹⁵ *El Peruano*, Jan. 20, 1971.

Mining

HISTORY AND TEXTS

When discovered and colonized by Spain, Peru was one of the world's richest countries in precious and industrial minerals. At the outset, Spanish mining legislation was merely transplanted to the new colonial possession. Pertinent provisions were scattered throughout the old codes of the *Fuero Juzgo*, *Fuero Real*, *Las Siete Partidas*, and the *Nueva Recopilación*. Before long, however, it became evident that these laws were inadequate to cope with the needs and customs of the New World. Consequently, observance of these codes was suspended, and for a time the mining industry was regulated only by the local viceregal decrees and orders.

In 1574 one of Peru's most outstanding viceroys, Francisco de Toledo, collected all of these decrees and orders into a body of *Ordenanzas*. This work, approved by King Philip II on February 7, 1574, became known popularly as the *Ordenanzas de Toledo*. The compilation was modified and enlarged as subsequent viceroys continued to issue orders and resolutions on the various aspects of mining. Over a century later, in 1683, Tomás de Ballesteros revised and updated Toledo's work under the official sanction of the incumbent viceroy, Melchor Navarra y Rocafull.

The importance and growth of the mining industry in the viceroyalty of New Spain, or Mexico, caused King Charles III to promulgate on May 22, 1783, the *Ordenanzas de Minería*¹ to be put into effect there. Because of the *Ordenanzas*' success in Mexico and the need for new regulations in Peru, this same codified body of laws was decreed, by a royal order dated December 8, 1785, to become enforceable in Peru as well. Except for amendments promulgated on April 28, 1873, February 6, 1875, and January 12, 1877, these famous ordinances remained in force for 115 years.² A collection of the 1785 ordinances and subsequent laws, decrees, resolutions, and circulars up to 1890 was compiled by Ricardo Aranda³ and published officially.

Following Peru's independence from Spain, attempts were made to draft a national mining code. The first committee was appointed for this specific task

¹ *Reales ordenanzas para la dirección, régimen y gobierno del importante cuerpo de la minería de Nueva España, y de su real tribunal general de orden de su magestad*. Madrid, 1783. 214 p.

² *Ordenanzas de minería y colección de las órdenes y decretos de esta materia posteriores á su publicación . . . con un apéndice concerniente las minas del Perú*. Nueva ed. dispuesta por C.N. Paris. Libr. de A. Bouret é Hijo. 1875. 335. lvi p.

³ Aranda, Ricardo, comp. *Colección de leyes, decretos, resoluciones y circulares que forman la legislación de minas del Perú, 1786-1890*. Ed. oficial. Lima, Carlos Prince, 1891. 314 p.

in 1826. Its members included the Director General de Minería and the board members of the Junta Principal de Minas. The committee's labors, however, were completely fruitless. In 1837 the creation of a second committee was authorized but for unknown reasons never constituted. The General Codification Committee of 1847, originally organized to formulate both the civil and civil procedure codes, as well as a mining code, limited its efforts to the first two. In 1858 a congressionally appointed committee produced a draft mining code for the consideration of the legislators. Signed by Juan Gualberto Valdura, Francisco Morales, and Miguel Damián Imaña, this draft, in effect, merely served to put into a codified form the contents of the Spanish Ordenanzas still in force.

Another draft code, attributed to José Manuel Osoreo, appeared in 1862, followed by still another draft in 1888 from a commission composed of Leonardo Pflücker y Rico, Eduardo Habich, Alberto Elmore, and Ramón Ribeyro. Their draft was presented to the Senate at an extraordinary session, but no definite recommendations came from this body. By a joint resolution of the Senate and the Chamber of Deputies, a legislative committee was appointed on September 1, 1890, to consider this draft code. Composed of Andrés Menéndez, Emilio Forero, Isaac Alzamora, Manuel Moreno y Maíz, and Alejandro Arenas, this committee, unfortunately, never carried out its instructions. A new draft, offered three years later by Federico Moreno,⁴ was eventually considered, together with the 1890 draft, by the Congress of 1896. Finally a mining code, based on provisions selected from both drafts, was authorized for promulgation by the executive power, only to be delayed further by objections from some members of Congress.

The Sociedad Nacional de Minería, entrusted with the revision of the already completed work, filed a report signed by Elías Malpartida, Federico Gildemaister, Estebán Montero, Alejandro Garland, and Hermann Gaffron, and presented a second draft of its own. Ultimately the Sociedad's work, as further revised by a legislative committee, became the basis of the Mining Code promulgated on July 6, 1900,⁵ and becoming effective on January 1, 1901. The provisions of this first national code were affected by a great number of laws, decrees, regulations, and administrative rulings which were subsequently enacted. Special legislation on the mining of gold, saltpeter (salitre), borax, and petroleum served to repeal some of the Mining Code's provisions.

Efforts were made from time to time toward a codification of the material

⁴ Moreno, Federico. *Proyecto de código de minería*. Lima Impr. del Estado, 1893. 47 p.; 2.ed. 1894. 48 p.; 3.ed. (oficial) 1895. 43 p.

⁵ *Código de Minería promulgado por el Supremo Gobierno en julio 6 de 1900*. Lima, E. Rosay, 1900. 70 p. [With: Sociedad Nacional de Minería. *Manual del Minero*. Ed. oficial. Lima, 1901.]

adopted since the promulgation of the code. An official edition of the code, with new material, was authorized and published by the Peruvian Bureau of Mines and Petroleum in 1924.⁶ This work employed an elaborate system of cross-references between the articles of the code proper and legislation enacted from 1901 to June 30, 1924. The complete texts of laws or regulations affecting an individual provision or section of the 1900 Code are inserted in italics following the text of the article affected. In 1929⁷ a committee was created for the task of codification under the chairmanship of Dr. Raúl Noriega, an associate justice of the Superior Court of Lima. Other members designated were Michel Fort, Carlos Portella, and Manuel Julio Rospigliosi. In 1934 this committee reported out a finished draft, incorporating therein the special laws on petroleum and gold. Available literature is obscure on the fate of this particular draft. It appears certain, however, that under Supreme Resolution of August 22, 1949,⁸ another commission was appointed, composed of Mario Samamé Boggio, Daniel Chavarri B., José Rocha Fernandini Y., and Alvaro Castro Castañeda. Charged with revising the original Mining Code of 1900, this body developed a draft which was eventually adopted, with some modifications, as Decree-Law 11357 of May 12, 1950, otherwise known as the Mining Code of 1950.⁹ This code became effective July 1 of the same year. The following year the administrative regulations necessary for the full implementation of the code were compiled and officially published by the government.¹⁰

Today mining ranks among Peru's largest export industries. Present plans represent the most ambitious development project in Peru's history. The importance of mining is clearly reflected in the creation of a separate ministry empowered specifically with overseeing energy and mining matters. As a further indication of the country's seriousness in this field, unexploited mining concessions were repossessed in late 1969 by the revolutionary government. This measure was followed by the enactment of a Policy (Normativo) Law for a comprehensive new law on mining under Decree-Law 18225 of April 14, 1970, and eventually a detailed version embodied in what is called the General Law on

⁶ *Código de Minería del Perú; anotado y concordado con todas las disposiciones vigentes contenidas en las leyes, reglamentos, decretos, resoluciones y ejecutorias referentes a la industria minera y de petróleo dictados hasta el 30 de junio de 1924.* 3.ed., oficial de la Dirección de Minas y Petróleo. Lima, Impr. Torres Aguirre. 1924. 566 p.

⁷ *El Peruano*, Apr. 10, 1929.

⁸ *El Comercio*, May 10, 1950.

⁹ *Código de Minería promulgado el 12 de mayo de 1950. Decreto ley no. 11357.* Ed. oficial. Lima, 1950. 112 p. (Ministerio de Fomento y Obras Públicas)

¹⁰ *Reglamentos del Código de Minería.* Ed. oficial. Lima, Ministerio de Fomento y Obras Públicas, 1951. 332 p.

Mining under Decree-Law 18820 of June 8, 1971,¹¹ superseded the 1950 Code. The most distinctive feature of these complementary laws is the prevalence of the state in all major mining activities—production, refining, and marketing.

LITERATURE

Description of legal literature dealing with mining legislation will be presented in the following sequence: the 1900 Code, the 1950 Code, and finally, the General Law on Mining of 1971.

Two of the earliest contributions to the legal writings on mining are by Ramón de la Fuente,¹ and Teodórico Olaechea.² The former has to his credit a compilation of mining laws, and the latter, a publication consisting of notes on the Peruvian mining industry.

Following the adoption in 1900 of the first national code, several annotated texts were published. On November 26, 1895, Dr. Paulino Fuentes Castro, editor of the legal daily, *El Diario Judicial*, was authorized by Congress to publish legislation in his paper, giving it the same official status as the laws published in *El Peruano*, the official gazette. In 1901 and 1903³ he published two official editions of the Mining Code. The 1903 publication, the seventh in his "Nueva Legislación Peruana" series, included, in addition to the code, other regulations and instructions applicable to the Consejo Superior de Minería and other administrative bodies.

The Sociedad Nacional de Minería issued an official handbook on fees, instructions, forms, and other data supplementing the code.⁴

Prof. Manuel Santos Pasapera of San Marcos University published a critical commentary⁵ on the code in two volumes. The first volume deals with the code itself, and the second, one-third the size of the first, treats of related legislation enacted before and after the adoption of the code.

A summarized version of the lectures of Professor Pasapera relating to the civil

¹¹ *El Peruano*, June 9, 1971.

¹ Fuente, Ramón de la. *Legislación de minas del Perú*. [1.ed.? and 2.ed.?] 3.ed. Lima, Benito Gil, 1887. 101 p.

² Olaechea, Teodórico. *Apuntes sobre minería en el Perú*. Lima, 1898.

³ Fuentes Castro, Paulino. *Código de Minería promulgado por el Supremo Gobierno en 6 de julio de 1900 . . .* Lima, "El Diario Judicial." 1901. 91 p.; 2.ed., autorizada y aum. 1903. 306 p.

⁴ Sociedad Nacional de Minería. *Manual del Minero*. Ed. oficial. Lima, Impr. La Industria, 1901. 144 p.

⁵ Pasapera, Manuel Santos *La novísima legislación peruana de minas*. Lima. Tip. El Lucero. 1905. 2 v. in 1.

law aspects of the mining industry was contributed by Manuel C. Rodríguez.⁶

An English translation of the code appeared in 1907.⁷ The following year Carlos E. Velarde published under government auspices the laws and regulations pertinent to the mining industry.⁸ Several years later he produced another work highlighting the history of the mining laws of Mexico, Peru, Bolivia, Chile, Argentina, and other Latin American nations in general.⁹

Together with Pedro C. Goitzolo, Prof. Miguel Antonio de la Lama,¹⁰ a prolific contributor to Peru's legal literature, annotated the 1900 Code in a 1909 work in which he included 76 numbered appendixes containing texts of resolutions, circulars, grants, concessions, and other related material, some only a page or two in length. The inclusion of forms, a technical dictionary, and general and chronological indexes makes this work a valuable reference tool, much like a similar work published with official government sanction by Dr. Juan Angulo Puente Arnao,¹¹ with the collaboration of Julio C. Alva and Guillermo Torres Málaga, two officials of the mining division of the Ministerio de Fomento. Their work appeared in three volumes: one emerged in 1909, another called an "appendix" in 1910, and the third, a "continuación" to the appendix in 1912. A second edition incorporating all three volumes appeared in 1917.

Law 7601 and regulations governing gold mining concessions were translated by E. Clinton Evans in 1933.¹²

Drs. Efrén and Tobías Posadas, brothers and official law compilers, published the legislation on gold mining covering the period from 1932 to 1940,¹³ together with the text of the code. Another compilation of the Posadas brothers covers

⁶ Rodríguez, Manuel C. *Minería legal; procedimientos para la adquisición y habitación de las minas según las teorías y principios enseñados en la Universidad Mayor de San Marcos por el catedrático Sr. Manuel Santos Pasapera*. Lima. Impr. de El Lucerno, 1900. 298 [5] p.

⁷ *Peruvian Mining Code*. Lima. Impr. de El Lucerno, 1907. 52 p.

⁸ Velarde, Carlos E. *La minería en el Perú*. 1908. 366 p. (Publicaciones del Ministerio de Fomento. Dirección de Fomento)

⁹ ———. *Historia de derecho de minería hispanoamericano y estado de la legislación de minas y petróleo en México, Perú, Bolivia, Chile y República Argentina* . . . Buenos Aires, 1919. 216 p.

¹⁰ Lama, Miguel Antonio de la, and Pedro C. Goitzolo, eds. *Código de Minería anotado y concordado* . . . Lima, Libr. é Impr. Gil, 1909. 447 p.

¹¹ Angulo Puente Arnao, Juan. *Legislación de minas anotada y concordada*. Ed. oficial. Lima, Ofic. Tip. de la Opinión Nacional. 1909. Alva, Julio C., and Guillermo Torres Málaga. *Apéndice a la legislación de minas*. 1910. Alva, Julio C. *Continuación del Apéndice* . . . 1912. 3 v.; 2.ed. Lima, Impr. y Libr. de San Pedro, 1917. 1,110 p.

¹² *Law no. 7601 and Regulations governing gold concessions in Peru*. Translated by E. Clinton Evans. Lima, Impr. J. Newton, 1933. 43 p.

¹³ Posadas, Efrén, and Tobías Posadas, comps. *La nueva legislación del oro (sistmatizada y concordada)*. Lima, Edit. Anteria, S.A., 1940. 95 p.

mining legislation enacted from 1924 through 1942¹⁴ and contains a prefatory historical sketch. A third work concerns procedural matters, both administrative and judicial.¹⁵ For their efforts the brothers received public recognition in the form of a diploma and gold medal awarded by the Municipality of Lima. The last known compilation of the brothers updates Peruvian mining legislation through 1947.¹⁶

From 1942 to 1944 Dr. Oscar Leguía Iturregui published two volumes¹⁷ incorporating the text of the Mining Code and the post-1901 special laws on gold, petroleum, saltpeter, and other minerals. The work is extensively annotated and supplemented with pertinent administrative circulars, concessions, and resolutions.

Other items include law theses, one written at the University of Chile on the comparative aspects of Chilean and Peruvian mining legislation,¹⁸ and others written at various Peruvian universities, which deal solely with Peruvian legislation.¹⁹

The Mining Code of 1950 is most noteworthy for its liberal tax provisions. Decrying the financial inability of Peru to exploit its wealthy mineral deposits, Fernando Schwalb, a Peruvian diplomat and lawyer who worked in the Peruvian embassy in Washington in the fifties, published a "memorandum"²⁰ explaining, in an effort to attract foreign investors, the tax benefits and other advantages offered by the new code. Dr. Schwalb also mimeographed what ostensibly is a handbook²¹ in which provisions of the code are correlated and broken down

¹⁴ ———. *Legislación Minera (1924-42)*. Lima, 1942. 123 p.

¹⁵ ———. *Procedimientos Mineros*. Lima, Libr. é Impr. D. Miranda, 1944. 102 p.

¹⁶ ———. *Legislación minera (1900-47)*. *Depurada, sistematizada y concordada, incluidos el Código y Reglamentos*. Lima, 1948. 218 p.

¹⁷ Leguía Iturregui, Oscar. *Código de Minería anotado y concordado*. Lima [Tall. de Linotipia] 1942-44. 2 v.

¹⁸ Fredes Aliaga, Manuel. *Estudio paralelo de las legislaciones mineras chilena y peruana*. [Santiago] 1942. 64 p. [Thesis, University of Chile]

¹⁹ Barreda y Laos, Felipe. *La propiedad minera en el Perú y su reforma*. Lima, Impr. La Industria, 1910. 43 p. [Thesis, University of San Marcos]

Calderón Rubio, S.A. *La contribución minera ante la economía política*. Trujillo, Tip. Olaya, 1913. 31 p. [Thesis, University of La Libertad]

Miranda Pelayo, L. *El minero y el propietario superficial*. Lima, Ofic. Tip. La Opinión Nacional, 1918. 34 p. [Doctoral thesis, University of San Marcos]

Llerena Morán, José. *Breves apuntes sobre las compañías mineras*. Lima, Impr. Peruana, 1920. 37 p. [Thesis, University of San Marcos]

²⁰ Schwalb, Fernando. *Peru is a mining country; memorandum for capitalists who may wish to invest in the Peruvian mining industry*. Lima, Schwalb-Velarde, 1951. 16 p.

²¹ ———. *Prontuario de las principales disposiciones del nuevo Código de Minería*. [Lima, 1950] 28 p.

with marginal notes for easy reference. Schwalb's tools are aimed at the business-oriented researcher, but for the law student, the mimeographed transcripts of the classroom lectures of Dr. Juan Thöl,²² a Peruvian professor of mining law, would be the best textbook substitute.

A number of legal aid materials were published from the mid-fifties to the late sixties. Perhaps the credit for the most comprehensive works belongs to Carlos Rodríguez Escobedo, a law professor whose expertise covers mining, petroleum, and agrarian law. In 1955 he annotated the new Mining Code²³ with references to the Constitution, other codes or laws, regulatory legislation, financial and tax legislation in point, as well as excerpts from judicial decisions. More than 10 years later he published an in-depth treatment of the mining industry and the laws governing it, tracing their evolutionary growth to the modern state of Peru.²⁴ The work is divided into four main chapters dealing with, among others, ownership and concession rights, qualifications for and obligations of concession holders, the form and extent of their concessions, the process of filing of oppositions or appeals against administrative decisions, the role of government administrative bodies and regional bureaus, contracts of sale and transfer of minerals, and contracts of exploration and exploitation.

In 1961 Guillermo García Montúfar issued what to date is the only known compilation of ministerial resolutions relative to administrative cases on mining. It includes Supreme Court decisions in those cases where appeals are made against administrative decisions and covers a span of nine years from 1950.²⁵

J. V. Fajardo edited a collection in which both the code text and the regulations are published in one volume divided into three sections, a convenient reference arrangement.²⁶ The first part contains the text of the code. Wherever helpful, excerpts from the pertinent statement of purposes (*exposición de motivos*)

²² Thöl, Juan. *Derecho de Minería*. [Lima?, 1950-?] 86 p.

²³ Rodríguez Escobedo, Carlos, ed. *Código de Minería, concordancias; anotado y concordado con la Constitución del Estado, código y leyes vigentes, reglamentos sobre el procedimiento minero, de seguridad e higiene, de delimitaciones, arancel de derechos y jurisprudencia de la Corte Suprema*. [Arequipa, Edit. Universitaria] 1955. 280 p.

²⁴ ———. *Tratado de derecho de minería: Código de Minería y legislación minera, reglamentación mineros, el denuncia y su tramitación*. [Arequipa, Edit. Universitaria de Arequipa, 1969?] 303 p.

²⁵ García Montúfar, Guillermo. *Jurisprudencia Minera*. Lima, Ministerio de Fomento y Obras Públicas, 1961. 330, xxxiii p. [Collaboration provided by Carlos Marchese Canepa]

²⁶ Fajardo, J.V., ed. *Código de Minería; creado por Decreto-ley no. 11357 de 12 de mayo de 1950 con todos sus reglamentos. Contiene además: el arancel de derechos del registro de concesiones y derechos mineros y el arancel especial para copias certificadas, y una síntesis informativa oficial con cuadros estadísticos sobre el desarrollo de la industria minera del Perú, preparado por la División de Estadística y Economía Minera del Ministerio de Fomento*. Lima, Edit. Mercurio [1963?] 347 p. (Legislación minera del Perú)

are given. The second part includes such regulations as the Reglamento del Código de Minería of May 9, 1951, and the Reglamento del Consejo Superior de Minería of March 12, 1951. The third part contains appropriate appendixes.

The well-known and respected English-language weekly journal of Peru, the *Andean Air Mail & Peruvian Times*,²⁷ devoted its entire April 14, 1972, issue to the mining industry of Peru. This issue treats of the 1971 General Law on Mining from every conceivable viewpoint. The main provisions of the general law, as outlined in the legal section of the magazine, are: (1) the creation of the state owned and operated Mineroperu as the major mining company in Peru; (2) state monopoly in mineral marketing with Mineroperu as the only channel both locally and internationally; (3) all copper refining to be a state monopoly, refining and smelting of other minerals to be the state's prerogative though this may be conceded out; (4) taxes related to the profitability of the mine and size of investment and not to profits alone; (5) creation of Comunidad Minera for each company, together with the nationwide Comunidad de Compensación Minera, under which personnel receive 10 percent of pretax profits, four percent of which is in cash and six percent in shares; and (6) creation of mining mixed companies in which the government is always guaranteed a 25 percent minimum participation.²⁸

Petroleum

Petroleum, now such an important factor in the world situation, has always played a critical role in the economy and politics of Peru.

In 1824 when Simón Bolívar declared Peru's independence, he decreed all abandoned mines in Peru as state property to be sold by the government to erase its debts. With this edict, he unwittingly set in motion a legal controversy that would continue to this day. Bolívar's decree made La Brea y Pariñas, a 643-square-mile reservation in northwestern Peru, the nation's only oil field operated by a private company as owner, rather than as a government concession holder. In 1863, when this field was finally tapped of its initial oil deposits, the great debate over its ownership began. Peruvian nationalists regarded La Brea y Pariñas' special status as an affront to Peruvian sovereignty. In 1889 the field became the property of a British firm, London and Pacific Petroleum.

Subsequent attempts to tax the field at an amount equal to that imposed on mining claims terminated in an arbitration court composed of Swiss, Peruvian,

²⁷ "Mining in Peru." In *Andean Air Mail & Peruvian Times* v. 32. Apr. 14, 1972, entire issue.

²⁸ *Ibid.*, p. 35.

and British judges. A 1922 arbitral award specified a settlement of tax claims and a schedule of tax rates to run through 1972. It was contended by some Peruvians that this award, in effect, confirmed the British firm's ownership of La Brea, and as a result, nationalistic passions were revived.

In 1924 the International Petroleum Company (IPC), originally a Canadian-based firm which was later absorbed by Standard Oil of New Jersey, purchased title to the field and inherited the problems attached to it. Following the 1963 Peruvian presidential elections, the incoming government repudiated the 1922 arbitration agreement and vowed a speedy resolution of the ownership issue. The subsoil of La Brea was declared by legislation the property of the state. In addition, the government filed a claim for back taxes amounting to \$841 million. Notwithstanding these moves, the question of ownership appeared to be far from final resolution. In July 1967 the government announced that an agreement had been reached with IPC. On August 12 of the same year the contending parties signed an agreement under the terms of which IPC was to turn over to the government its title to La Brea and in return, the company was to be released from all tax and illegal profit claims by the government. It was at this stage that the 1968 military takeover occurred, after which La Brea y Pariñas was expropriated and declared the property of the government. Copies of speeches of two former Peruvian deputies (congressmen) and a paper entitled "Peru: petróleo y revolución," discussed below, provide glimpses of the foregoing historical antecedents.

Individual legal materials antedating the present legislation and regulation are not numerous partly because most of them are invariably included in collections of mining laws relating to all types of minerals. The early petroleum law and regulations of Peru, excerpted from an article in English published by Thomas W. Palmer¹ in the yearbook of the Association of the Bar of the City of New York, were reprinted in pamphlet form in 1930. In the same year R. A. Deústua edited a collection of petroleum laws existing as of that date.²

Present legal controls on petroleum are embodied in Law 11780 of March 12, 1952, as amended, and the regulations to this law are contained in the Supreme Decree of June 10, 1952, as amended. By express provision of the former, the exploration and exploitation, manufacture, refining, and transport of petroleum are of public interest. Therefore, the state may undertake any of these operations

¹ Palmer, Thomas W. *Oil laws of Argentina, Bolivia, Brazil and Peru*. New York, Association of the Bar of the City of New York, 1930. 13 p.

² Deústua, Ricardo Alejandro, ed. *Legislación del petróleo en el Perú*. Lima, Impr. A.J. Rivas Berrio, 1930. 200 p.

directly or through concessions granted for such purposes and under such conditions that the state may impose according to law.³

Two official volumes on the aforesaid law and its regulations were printed, together with related administrative orders, between 1952 and 1955.⁴ English translations of the basic law⁵ and the principal regulation⁶ were undertaken by E. Normand immediately after the publication of the first of the two previously cited volumes. The most recent translations appear in a Pan American Union publication⁷ and in a compilation of the oil laws and concession contracts covering South America issued periodically by a New York publishing firm.⁸

Speeches delivered at various intervals on the floor of Peru's former Chamber of Deputies (House of Representatives) by its members Víctor Pérez Santistéban⁹ and Augusto C. Peñaloza Vega,¹⁰ during debates on petroleum draft laws, and a paper written by Ezequiel Ramírez Novoa,¹¹ secretary general of the Committee of Lawyers for the Defense of Peruvian Petroleum, show a chronology of petroleum laws from the 1920's to the 1950's. In addition, they provide interesting antecedents, as discussed earlier, on the problem of La Brea y Pariñas and the overall question of the nation's sovereign rights of disposition and control over its petroleum and other mining resources. All three sources are useful aids in interpreting Peru's petroleum policies and laws.

³ Lavalle, Hernando de. *A statement of the laws of Peru in matters affecting business*. 3.ed., rev. and enlarged. Washington, Pan American Union, 1962. p. 97.

⁴ Ministerio de Fomento y Obras Públicas. *Ley de Petróleo no. 11780 y Reglamento*. Ed. oficial. Lima, 1952-55. 2 v. [v. 2: *Disposiciones Complementarias*]

⁵ *Ley de Petróleo no. 11780. Petroleum Law no. 11780*. Ed. especial. Lima, E. Normand [1952] 78 p. [Bilingual edition]

⁶ *Regulations of Petroleum Law no. 11780, approved by Supreme Decree no. 1 of June 10, 1952*. Lima, E. Normand [1952] 72 p.

⁷ Pan American Union. General Legal Division. *Mining and petroleum legislation in Latin America*. Washington, Pan American Union [1958-60] 2 v.; 2.ed. 1969. 329 p.

⁸ Petroleum Legislation. *South America: basic oil laws and concessions contracts; original texts*. New York [1967] 2 v.

———. ———. *Supplement, no. 1* - New York [Gordon H. Barrows, 1960-]

⁹ Pérez Santistéban, Víctor. *Discursos parlamentarias: petróleo. Abundancia y poder . . .* Lima, 1953. 80 p.

¹⁰ Peñaloza Vega, Augusto C. *La regalía en el derecho petrolero; discursos pronunciados en la Cámara de Diputados del Perú*. [Lima] Edit. Huancayolee [1960] 89 p.

¹¹ Ramírez Novoa, Ezequiel. *Perú: petróleo y revolución*. Buenos Aires, Edit. Sudestada, 1969. 44 p. (Colección la unión americana)

Civil Law

History and Texts

According to Luis Antonio Eguiguren, a former chief justice of Peru's Supreme Court, civil institutions are based on deep-seated traditions which resist rapid changes. His conclusion is confirmed by the fact that, except for the short-lived Santa-Cruz Civil Code which was imported from Bolivia, Peru has had only two official civil codes of its own. It took 31 years from independence to adopt the first code, which remained in force for 84 years before its repeal.

Codification in the civil law field was one of the earliest ambitions of independent Peru. On the eve of independence, Peru's civil institutions were regulated by provisions found in the old Spanish codes (*Las Siete Partidas*, the *Leyes de Castilla*, and the *Recopilación de las Leyes de las Indias*) and in a confusing mass of additional royal decrees, orders, and special local legislation promulgated over three centuries.

As early as 1825,¹ a committee was appointed to draft a civil code and a code of civil procedure, but the unsettled political conditions in the new republic prevented the committee from accomplishing its goal. Another committee, constituted in 1831² to draft both a penal code and a civil code, was also unsuccessful. A transitory provision in the 1834 Constitution required the Supreme Court to draft codes, commencing with the civil code, for deliberation and approval at each year's opening session of the court. Within the year of this Constitution's adoption, Dr. Manuel Lorenzo de Vidaurre y Enclada, presidente (chief justice) of the Supreme Court, presented a draft civil code³ based mainly

¹Decreto no. 18 de 31 de enero de 1825. In *Colección de leyes, decretos y órdenes*. Lima, 1832. v. 2, p. 56-57.

²Decreto no. 147 de 22 de octubre de 1831. In *Colección de leyes, decretos y órdenes*. Lima, 1937. v. 4, p. 96-97.

³Vidaurre y Enclada, don Manuel Lorenzo de, ed. *Proyecto de código civil*. Lima, 1834-36. 3 v.

on the Prussian Code of Frederick II and partly on the more familiar Spanish legislation still in force. The draft, despite its brilliant *exposición de motivos*, was not approved and was never considered by subsequent codification committees.

During the Peru-Bolivian Confederation (see chapter on constitutional law), the civil code which had been promulgated in Bolivia by General Santa-Cruz, Bolivia's president and supreme protector of the confederation, was adopted for Peru. Santa-Cruz felt that the void caused by the lack of a codified body of laws would be adequately filled by the adoption of his own work. Identical texts were formally promulgated for the newly created states of North and South Peru by decrees dated October 28,⁴ and November 1, 1836,⁵ respectively. However, the Peruvians were unhappy recipients of these "foreign" codes and became anxious to discard them. Their desire was fulfilled in July 1838 when General Orbegozo, Peru's former president, declared the Santa-Cruz codes repealed. Later, General Santa-Cruz himself, by a decree of November 18, 1838, suspended observance of his codes while awaiting legislative action. Upon the dissolution of the confederation in 1839, a reunified Peru reinstated the Spanish legislation until such time as national codification was achieved.

Following the collapse of the confederation, the political situation did not lend itself to a successful codification effort. However, when peace returned upon President Castilla's assumption of power, a new commission was appointed under Law of October 9, 1845, with a membership consisting of Manuel Pérez de Tudela, Francisco Javier Mariátegui, Manuel López Tizón, José Julio Rospigliosi, José Manuel Tirado, and José Gómez Sánchez. This commission managed to draft a civil code patterned after both the Napoleonic and the Spanish codes. In 1847 when the draft⁶ was submitted to the Congress, it carried a majority dissenting opinion of the commission's membership⁷ relative to the civil matrimony provisions of the draft. Congress deliberated on the draft for a number of years. To facilitate the legislators' study of the draft, its text was ordered published by a Decree of November 22, 1850. The Congress of 1851 appointed a legislative committee to rewrite the draft along the lines of the

⁴ *Código Civil Santa Cruz del estado Nor-Peruano*. Ed. oficial. Lima, Impr. de José Masías, 1836. 200 p.

⁵ *Código Civil Santa Cruz del estado Sud-Peruano*. Ed. oficial. Lima, Impr. de José Masías, 1836. 200 p.
———. Cuzco, Impr. de La Beneficencia, 1837. 152 p.

⁶ *Proyecto del código civil para la República del Perú presentado a la legislatura de 1847 por la comisión nombrada conforme de 8 de octubre de 1845*. Lima, Impr. del Correo Peruano, 1947. 231 p.

⁷ Mariátegui, Francisco Javier. *Vindicación que la mayoría de los vocales de la comisión de códigos presenta al público contra las imputaciones que se la hacen . . . en la nota con que pasó al ministerio el proyecto del código civil . . .* Lima, Impr. de Eusebio Aranda, 1847. 74 p.

debates of the previous years. Subsequently, Congress enacted the draft into law and the President, on July 28, 1852, finally promulgated it as the first Civil Code of Peru.⁸ The exclusive right to publish an edition of 8,000 copies of this official text was granted to Dr. Hipólito Sánchez. Several unofficial editions of the code and of its subsequent modifications have been published since its promulgation. In 1920 Frank L. Joannini translated the code into English.⁹

The 1852 Code had a preliminary title and three libros (books) dealing with persons, property rights, and obligations and contracts, making up a total of 2,301 articles. In general, the code was criticized for perpetuating obsolete institutions and being unresponsive to the new postindependence conditions of the country. To quiet this criticism a new Civil Code was drawn up in 1887 by the Comisión Revisora de los Códigos en Materia Civil,¹⁰ a group of five outstanding jurists: Juan Luna, Simón Gregorio Paredes, José Jorge Loayza, Manuel Santos Pasapera, and Francisco Mariano Fernández. The proposed new code, however, never became law.

The Civil Code of 1852, as amended from time to time, remained in force until 1936. Under the presidency of Augusto Leguía, a new drafting commission, the Comisión Reformadora del Código Civil Peruano, was authorized under Supreme Resolution dated August 24, 1922, to formulate necessary amendments to the existing code. The members appointed were Juan José Calle, fiscal of the Supreme Court; Manuel Augusto Olaechea, bar association president; Pedro Oliveira and Alfredo Solf y Muro, professors of law at San Marcos University; and Hermilio Valdizán, a medical professor. The commission began work on September 8, 1922, and continued for the next 14 years. During that period, its debates, decisions, and proceedings were published in eight segments (fascículos),¹¹ the first seven of which contain complete records of the body's deliberations over a given period. A second edition of the first five fascículos was subsequently published. Ultimately a preliminary civil code was completed

⁸ *Código Civil del Perú*. Lima, Impr. del Gobierno por Eusebio Aranda, 1852. 328 p.; another ed. 1852. 352 p.

———. Lima, M.A. Fuentes y B. Gil [187-] 392 p.

⁹ *Civil Code of Peru*. Translated by Frank L. Joannini. St. Louis, Thomas Law Book Co., 1920.

¹⁰ *Proyecto de código civil para la República del Perú*. Lima, Impr. de J. Francisco Solís, 1890. 718 p.

¹¹ *Actas de las sesiones de la Comisión Reformadora del Código Civil Peruano creado por Supremo decreto de 26 de agosto de 1922*. Lima, Impr. "El Progreso Editorial," 1923-29. 8 fascículos; 2.ed. Lima, Impr. C.A. Castrillon, 1928-29. 5 fascículos. [Imprint varies]

in 1926,¹² but the final draft was not written until 1936.¹³

The opinion and counsel of the bar association members, law professors, and outstanding authorities were sought by the commission on many debatable or controversial questions. The correspondence with these individuals, together with the documents considered, were collected and published at the time the preliminary draft was finished.¹⁴

The 1936 draft was submitted to a second commission which met jointly with a legislative committee for purposes of final revision. The document, as finally revised, was approved by another committee appointed by the Congress for this specific purpose. On August 30, 1936, President Benavides, pursuant to authority extended by Law 8305 of June of that year, promulgated this draft as the new Civil Code of Peru, superseding that of 1852, effective November 14, 1936. Three implementary laws on civil registry, on marriage and divorce, and on the administration of property of foundations are usually appended, among other relevant laws, to the official¹⁵ and unofficial editions¹⁶ of this code.

The code itself consists of a preliminary chapter and five books. The preliminary chapter contains general rules of law drawn from the letter and spirit of the Peruvian Constitution, international law and treaties, and principles enunciated in the Swiss, German, and Brazilian codes. The five books cover broad topics in the following order: (1) persons, both natural and juridical; (2) domestic relations; (3) inheritance, wills, and succession; (4) property, the rights and duties related thereto; and (5) obligations and contracts. This code, as amended, is still in force.

An early source of historical information on the 1852 Code is an article by José Basadre.¹⁷ Former Chief Justice Eguiguren provides certain aspects of the

¹² *Segundo anteproyecto del código civil del Perú*. Lima, Impr. Minerva, 1926. 5 pamphlets. (Comisión Reformadora del Código Civil)

¹³ *Proyecto de código civil elaborado por la comisión creada según Resolución suprema de 22 de agosto de 1922*. Lima, Libr. é Impr. Gil, S.A., 1936. 277 p.

¹⁴ *Consultas que la Comisión Reformadora del Código Civil dirige a las cortes superiores...* Lima, 1925. 72 p.

Consultas de la Comisión Reformadora del Código Civil. Lima, Libr. é Impr. Gil, 1926. 533 p.

¹⁵ *Código Civil promulgado por Decreto supremo de 30 de agosto de 1936 en uso de la autorización contenida en la Ley no. 8305*. Ed. oficial. Lima, Impr. Americana [1939] 305 p.; 2.ed. (?) 3.ed. oficial. 1948. 317 p. [Printer varies]

¹⁶ *Código Civil; Reglamento para la organización y funcionamiento de los registros del estado civil, Reglamento de las inscripciones, con sus reformas*. Lima, Edit. J. M. Cajica, Jr. [1957] 528 p. (Colección Cajica de leyes americanas, 55. Leyes Peruanas)

¹⁷ Basadre, José. "Antecedentes del Código Civil de 1852." In *Revista de Derecho y Ciencias Políticas*, Lima, 1939, Año II, no. 2, p. 283-319.

legislative history of both this code and the present one in a speech¹⁸ referred to at the beginning of this chapter. This speech was delivered by the chief justice at Columbia University when he accepted the degree of Doctor of Laws, *Honoris Causa*, conferred on him by that university sometime in the 1950's.

The most recent text, albeit nonofficial, of the 1936 Code was published by a commercial firm in 1971¹⁹ in commemoration of the 150th anniversary of Peruvian independence. Individual provisions of the code are followed by citations to relevant provisions in the code itself as well as citations to relevant provisions in other Peruvian codes: civil, civil procedure, commercial, criminal, criminal procedure, and the special codes on minors, military justice, and taxation. In addition, wherever necessary, provisions of the Constitution, the Organic Law of the Judiciary, the Law on Mercantile Companies, and a great number of pertinent supreme decrees or resolutions are also cited. Because of its currentness, this text is of great importance.

Under the old code, absolute divorce was prohibited and only religious marriages were recognized, but under the 1936 Code, civil marriages and absolute divorce are recognized. Another innovation in the newer code is the broadening of women's rights. Under the preliminary chapter of the present code, the concept of relativity of rights is upheld in article 2 which provides, in effect, that the code does not protect or countenance the abuse of rights. Article 6 enunciates the *lex rei sitae* doctrine which holds that properties, regardless of their nature, are to be governed by the law of the place of their location. It is interesting to note that in articles 5 and 8, both the nationality and domiciliary doctrines are adopted. Thus, pursuant to article 5, the status, capacity, family rights, and duties of persons are subject to the law of the domicile, unless Peruvian nationals are concerned, in which case Peruvian laws shall govern. On the other hand, pursuant to article 8, both Peruvian nationals and domiciled aliens are to be governed by Peruvian laws on matters of successional rights as well as testamentary capacity and the intrinsic validity of wills.

Literature

Because of the great wealth of literature in this field, a systematic treatment of the material is both necessary and convenient, and consequently, this section

¹⁸ Eguiguren, Luis Antonio. *Instituciones civiles del Perú; discurso pronunciado al recibir el título de Doctor de Leyes, Honoris Causa, en la Universidad de Columbia*. Lima, Impr. Santa María, 1954. 59 p.

¹⁹ *Código Civil Peruano. Ley no. 8305 modificado y concordado con las últimas disposiciones de códigos y leyes vigentes*. Lima, Edit. Litográfica América [1971] 391 p. (Colección Jurídica Peruana)

on literature is subdivided. The first subdivision is devoted to annotated codes and treatises, including textbooks, annotated texts of the civil code, or commentaries thereon, as well as treatises on civil law in general. A second subdivision describes monographic items on special subjects.

There will be a deviation from this arrangement when several works by the same author, publisher, or editor are discussed. In this case they are grouped together under either subdivision, regardless of their nature or subject.

ANNOTATED CODES AND TREATISES

The earliest item that has been located deals with civil law and its institutions as they existed before initial codification was achieved. It is a pocket-sized handbook intended for use by American lawyers. Originally published in 1827 in Paris by a Peruvian jurist identifying himself only as J. E. de O.,¹ it was revised three years later in Peru.

Shortly after the adoption of the 1852 Civil Code, Prof. José Silva Santistéban² contributed a compilation of his lectures which he apparently revised and augmented later with additional material.

Dr. Toribio Pacheco commenced work on what he hoped to be a multivolume series of the entire code. He died, however, after publishing a three-volume treatise covering only up to Book 2 of the code.³ The incomplete work was published posthumously in 1872.

The 1890 draft code, which was rejected by Congress, was published in 1891 with short commentaries by Manuel Pío Portugal,⁴ a jurist. The work appeared in two pamphlets over a period of two years.

Dr. Miguel Antonio de la Lama, noted authority and commentator, issued a series of annotated editions of the 1852 Civil Code.⁵ The legislative material used in the notes in each successive edition is updated with that in force at the

¹ O., J.E. de. *Manual del abogado americano. Impreso en Paris en 1827. Correjido y mejorado por una sociedad de amigos*. Arequipa, Impr. del Gobierno administrada por Pedro Benavides, 1830. 302 p.

² Silva Santistéban, José. *Derecho peruano. Parte civil. Compendio de curso dictado en el Colegio de Ciencias de esta ciudad . . .* Puira, Impr. por M. Rubio. 1853. 176 p.; 2.ed., corr. y mejorada. 1853. 152 p.; 3.ed. 1860. 296 p. [Title and printer vary]

———. *Derecho Civil Peruano*. Lima, 1860.

³ Pacheco, Toribio. *Tratado de derecho civil*. Lima, A. Alfaro y Cía., 1860-72. 3 v. [Imprint varies] 2.ed. 1872. 3 v.

⁴ Portugal, Manuel Pío. *Ligeros comentarios sobre el nuevo proyecto del código civil*. Lima, Impr. del Estado, 1891-92. 2 pamphlets.

⁵ Lama, Miguel Antonio de la, ed. *Código Civil del Perú con citas, notas, concordancias . . .* Lima, Impr. Gil, 1893. 552 p.; 2.ed. 1899. 702 p.; 3.ed. (?) 4.ed. 1914. 1,180 p.; 5.ed. 1920. 1,227 p.; 6.ed. 1928. 504 p. [Printer varies]

time of publication. An appendix in each volume contains digested court decisions, treaty provisions in point, and related laws and decrees. The fourth and fifth editions in the same series were published in collaboration with Pedro C. Goitzolo and the sixth edition, with Germán D. Zevallos. Dr. de la Lama also edited collections of laws⁶ supplementing the civil code and other codes treated in other chapters of this guide.

A commentary in French by Dr. Raoul de la Grasserie⁷ appeared in 1896 as part of a series of analytical studies of Latin American codes. The work has an exhaustive introduction and an article-by-article treatment of the code. An appendix contains French translations of the Montevideo Treaties of 1889, which affect the civil law institutions in Peru, and the French texts of several Peruvian laws related to the code.

The lectures of Prof. Cesáreo Chacaltana⁸ on civil laws at San Marcos University were collected and published by his students, Leopoldo Cortés and Manuel C. Rodríguez, in 1897.

In 1899 the Civil Code of 1852 was also annotated by Judge Ricardo Ortiz de Zevallos y Vidaurre,⁹ a former member of one of the codification committees. Several years later, he continued Dr. Pacheco's multivolume project (*supra*) by writing an extensive treatise on the civil code, with particular emphasis on obligations and contracts.¹⁰

In 1902 and 1909 the text of laws and regulations as of those years modifying some of the provisions of the 1852 Code was published in annotated collections by Drs. Guillermo A. Seoane¹¹ and J. Antonio Cáceres,¹² respectively.

Dr. Francisco Samanamú, using a system of numbered paragraphs for his commentaries, covers the entire contents of the code, following the order in

⁶ ———. *Suplementos de los códigos en orden alfabético* . . . Lima, Impr. del Estado, 1873. 343 p.

———. *Suplemento del Código Civil. Ed. de 1905 hasta el 31 de diciembre de 1911*. Lima, Libr. é Impr. Gil, 1912. 201 p.

⁷ Grasserie, Raoul de la. *Code Civil Péruvien*. Paris, V. Giard & E. Brière, 1896. 277 p. (Etude de législations étrangères)

⁸ Chacaltana, Cesáreo. *Derecho civil común (primer curso) Resumen de las lecciones dictadas en la Universidad Mayor de San Marcos*. Lima, 1897.

⁹ Ortiz de Zevallos y Vidaurre, Ricardo, ed. *Código Civil Peruano*. Lima, 1899.

¹⁰ Ortiz de Zevallos y Vidaurre, Ricardo. *Tratado de derecho civil peruano teórico y práctico*. Lima, E. Rosay, 1906. 635 p.

¹¹ Seoane, Guillermo A. *Código Civil Anotado (1852)*. Lima, 1902.

¹² Cáceres, J. Antonio. *Legislación peruana. Reforma de las prescripciones contenidas en los códigos*. Arequipa, Tip. Medina, 1909. 96 p. [Tomo I: Código Civil]

which the topics are set forth in the code.¹³

A scholarly thesis, published by Edilberto C. Boza in 1918,¹⁴ traces the development of civil law institutions, compares Peru's law and practice with those of other countries, and stresses the need for reform and modernization in the national civil code. The work discusses new trends in civil law, paying particular attention to torts and civil responsibility arising from crimes. For his thesis, the author consulted works written by both domestic and foreign authorities.

In Dr. Angel Gustavo Cornejo's work,¹⁵ the text of the articles, appearing in bold-face type, is preceded by historical and legal antecedents with references to comparative foreign legislation and practice. This is followed by elaborate cross references, comments, and digested case law or jurisprudencia. Apparently only the first volume of this work, covering persons, has been published. Years later Dr. Cornejo, employing a similar format, annotated the 1936 Civil Code.¹⁶ This second work is considered an authoritative source by Peruvians.

As chairman of the revisory commission appointed in 1922, Dr. Juan José Calle scrutinized the 1852 Civil Code.¹⁷ Using italicized footnotes, he highlights the similarities or differences between this code and the commission's proposed substitute. Appended to the work are the 1889 Montevideo Treaties, with pertinent notes, and the dissenting opinion of two commission members relative to the draft code's divorce provisions.

The most comprehensive of the annotated works on the 1936 Code is that contributed by the distinguished jurist Dr. Germán Aparicio y Gómez Sánchez.¹⁸ In the first of 15 volumes, the text of the code is given with footnotes to related provisions in the superseded codes. Consultation is facilitated by marginalia and excellent analytical indexes. The second and third volumes deal with the various drafts and the deliberations thereon. The fourth volume through the

¹³ Samanamú Francisco. *Instituciones de derecho civil para todos en concordancia con las disposiciones vigentes sobre materia en el Perú*. Lima, J. Boix, 1911. 2 v.; 2.ed., corr. 1917. 2 v. [Title and publisher vary]

¹⁴ Boza, Edilberto C. *Reformas del derecho civil*. Lima, Impr. de El Centro Editorial, 1919. 184 p.

¹⁵ Cornejo, Angel Gustavo. *Comentarios al Código Civil de 1852. De las personas y de sus derechos*. Chiclayo, Dionisio Mendoza, 1921. 1 v.

¹⁶ ———. *Código Civil, exposición sistemática y comentario . . .* [Lima] Libr. é Impr. Gil, S.A., 1937-39. 1-2 v.

¹⁷ Calle, Juan José. *Código Civil del Perú anotado con las modificaciones que contendrá el nuevo código que en breve presentará al poder ejecutivo la comisión reformadora creada por Supremo decreto de 26 de agosto de 1922*. Lima, Libr. é Impr. Gil, 1928. 945 p.

¹⁸ Aparicio y Gómez Sánchez, Germán. *Código Civil. Concordancias*. Lima, Libr. é Impr. Gil, 1936-44. 15 v.; 2.ed., rev. 1940- 1 v.; 3.ed., rev. 1949- 1 v. [Printer varies]

seventh contain all laws and regulations on a host of subjects falling within the purview of the civil code. Volume 8 incorporates case law, and the succeeding volume contains a complete national bibliography and a good foreign civil law bibliography. This volume also deals with code articles 1 to 74, annotated with European and Latin American laws appearing in the form of footnotes. Volumes 10 through 15 continue this type of comparative study to the last article in the code. Second and third revised editions of the initial volume appeared in 1940 and 1949, respectively, the revisions having been carried out by the author's sons, Germán, Felipe, and Alfredo.

A succinct but interesting thesis by Estuardo Núñez¹⁹ treats of the influence of German doctrines and laws on the Peruvian codes, particularly the 1936 Code. A three-volume work on the 1936 Code appeared between 1937 and 1938. Its author, Judge Darío Rodríguez Llerena,²⁰ a justice of the Superior Court at Lambayeque, uses analytical notes, copious citations, and correlations thereto.

Dr. José León Barandiarán, eminent law professor and scholar, wrote on several aspects of the civil code for classroom teaching purposes.²¹ He also produced several volumes devoted to an analysis of the provisions of the same code on obligations and contracts.²² His first volume covers articles 1075 to 1170, and the second, articles 1171 to 1327, all of which deal with obligations to give a determinate thing, or to do or not to do something. Alternative and elective obligations, divisible and indivisible obligations, joint and several obligations, obligations subject to a term or penalty, extracontractual obligations, and tort liabilities are covered. The third volume treats of the formalities of contracts, their elements, terms, and effects. With the fourth volume, Dr. Barandiarán chose as his subject the first book of the code, articles 1 to 74, the Law of Persons. All four volumes were published as a series at intervals of two or three years, the last one appearing in 1952. Two years later he issued a new edition of the first volume. In 1950²³ he published a paper treating specifically of juridical or legal

¹⁹ Núñez, Estuardo. *La influencia alemana en el derecho peruano*. Lima, Libr. é Impr. Gil, 1937. 46 p.

²⁰ Rodríguez Llerena, Darío. *Código Civil. Promulgada por Decreto supremo de 30 de agosto de 1936 . . . Concordancias, motivos, notas críticas y explicativas*. Chiclayo, Libr. é Impr. Mendoza, 1937-38. 3 v.

²¹ León Barandiarán, José. *Derecho civil. Acto jurídico (Apuntes del curso dictado . . . en la U.C. del Perú. Año académico de 1939. 3° de derecho)* . . . [Lima? 1939?] 48 l.

———. *Derecho civil, IV curso . . . Año 1939*. [Lima? 1939?] 331 l.

———. *Derecho civil, 1er curso . . . Año 1941*. [Lima? 1941?] 157 l.

²² ———. *Comentarios al Código Civil Peruano (derecho de obligaciones)* Lima, Libr. é Impr. Gil, S.A., 1938-52. 4 v.; 2.ed. [1954-] 1 v. [Printer varies]

²³ ———. *Manual del acto jurídico*. Lima, Gil, 1950. 119 p.

acts, generally covered in the basic civil code provisions. This paper was updated in 1961.²⁴

The following year he edited and updated an unofficial text of the 1936 Code which was published by the Institute of Hispanic Culture in Madrid.²⁵ He prefaces this work with a brief analysis of each book of the code, followed by the code's text which is annotated with cross-references to supplementary laws. In 1963 he wrote once again on the Law of Persons as well as on the conflict of law rules in the preliminary chapter of the code and issued it as a monographic work.²⁶ The last known published work of Dr. León Barandiarán bears a 1965 imprint date. It deals once again with contracts,²⁷ including sales, labor, and service contracts. Bearing the designation "Tomo I" on the title page, the work appears to be the first volume of a series.

The Law on Administration of Foundations, adopted to supplement the Civil Code of 1936, is the subject of a comparative study by José Alvarado Sánchez.²⁸ This study treats of the economic and legal development of foundations and discusses needed reforms.

A handbook intended for use as a textbook at Peru's Catholic University was written by Aníbal Corvetto Vargas in 1945.²⁹ An analytical outline useful for review appears in 23 folded charts at the end of the book, together with subject and legislation indexes and a glossary of legal maxims. The work was revised in 1954.

José Manuel Valega³⁰ annotated the Civil Code in 1946. His citations consist almost entirely of cross-references to other articles of the Civil Code itself and to those of the Code of Civil Procedure. According to available bibliographic information, Abraham Gómez³¹ apparently annotated the code in 1958, but his

²⁴ ———. ———. Lima, Impr. de la Univ. Nacional Mayor de San Marcos, 1961. 111 p.

²⁵ ———. *Código Civil del Perú. Estudio preliminar* . . . Madrid, Inst. de Cultura Hispánica, 1962. 287 p.

²⁶ ———. *Manual de derecho civil; título preliminar y derecho de las personas*. Lima, Impr. de la Univ. Nacional Mayor de San Marcos, 1963. 121 p.

²⁷ ———. *Contratos en el derecho civil peruano*. Lima, Comisión Administradora del Fondo Edit. de la Facultad de Derecho, Univ. Nacional Mayor de San Marcos, 1965 [cover 1966-] 1 v.

²⁸ Alvarado Sánchez, José. *Las fundaciones en nuestro derecho*. Lima, Cía. de Impresiones y Publicidad, 1943. 108 p. (Biblioteca Perú actual. IV. Economía y derecho)

²⁹ Corvetto Vargas, Aníbal. *Manual elemental de derecho civil peruano*. Lima, Manuales "Siduc," 1945. 1 v.; 2.ed. 1954- 1 v. [Printer varies]

³⁰ Valega, José Manuel. *Código Civil Concordado*. [Lima, Libr. é Impr. D. Miranda] 1945. 285 p. [Cover dated 1946]

³¹ Gómez, Abraham. *Código Civil; Concordado*. Lima [1958?] 230 p.

work has not yet been acquired by the Library of Congress.

Another textbook, along the lines of an introductory primer on civil law, was issued by Prof. Masías D. Sánchez³² at the National University at Trujillo. The contents of the book were drawn entirely from his lectures concerning, among other topics, the concepts of private and public laws, acquisition of rights, the concurrence of consent to consummate a juridical act, and the presence of factors which vitiate consent such as violence and fraud.

Two other distinguished gentlemen who have devoted their time and expertise to updating and annotating the code are Fernando Guzmán Ferrer, who served Peru at different times as a lower court and superior court judge and attorney general, and Dr. Jorge Eugenio Castañeda, law professor and nationally known author. Dr. Guzmán's initial work covers all the legislative, doctrinal, and jurisprudential material, as of 1954, in two volumes. It is, like most works of this sort, a commentary arranged by article.³³ Citations to antecedents and related source materials follow each article, and commentaries drawn from Peruvian authorities, including the members of the codification commission, as well as from Dr. Guzmán's experience, appear in separate columns. The work was eventually revised and enlarged into four volumes. The topic of succession, included in volume one of the first edition together with the Law of Persons and domestic relations, is treated in a separate volume in the second edition, and obligations, which was incorporated with property rights in the second volume of the first edition, was moved to a third volume. The fourth volume adds the subject of contracts.

Dr. Castañeda, certainly one of the outstanding authorities on Peruvian civil law, produced a substantial number of essays, treatises, and commentaries on the code. His excellent annotated codes appeared in three editions from 1955 to 1966.³⁴ Years earlier he had written textbooks³⁵ for different levels of law studies at San Marcos University. He also issued comprehensive works on

³² Sánchez, Masías D. *Derecho civil (primer curso) Versión de las lecciones dictadas en la Univ. Nacional de Trujillo*. Trujillo [Empresa Edit. "La Nación"] 1947. 220 p.

³³ Guzmán Ferrer, Fernando, ed. *Código Civil; exposición de motivos, comentarios, jurisprudencia, concordancias*. Lima, 1954. 2 v.: 2.ed., no oficial. 1971. 4 v. (Legislación Peruana)

³⁴ Castañeda, Jorge Eugenio, ed. *Código Civil, disposiciones legales complementarias, concordancias y jurisprudencia de la Corte Suprema, con notas*. Lima. Libr. Mejía Baca. 1955. 508 p. (Códigos Peruanos Anotados) 2.ed. 1962. 523 p.; 3.ed. 1966. 586 p. [Title varies]

³⁵ ———. *Segundo curso de derecho civil, Universidad Nacional Mayor de San Marcos*. [Lima, 1948?] 2 v.

———. *Derecho civil, 3er curso: teoría general de las obligaciones*. Lima, 1950. 250 p.

the special subjects of property rights,³⁶ obligations, and contracts.³⁷ His commentaries dealing with special topics falling within the broad category of obligations and contracts have been excerpted from his major works and published as "separatas" (articles and essays) in law school and other journals. One such essay treats of liens;³⁸ a second treats of *daño aquiliano*, a concept originating from the ancient Roman law of "Lex Aquilia" involving obligations to repair damages arising from noncontractual negligence. This concept is, in a limited sense, similar to the Anglo-American institution of tort.³⁹ A third essay probes assignment of credits,⁴⁰ and a fourth discusses debtor-creditor relations in general.⁴¹

Leoncio Olazábal Feijoo's well-written treatise on civil law appeared in 1961.⁴² The author's prefatory note indicates that this study is a second edition published in response to requests received from professional lawyers and students alike after the first edition went out of print. The author presents his subjects in accordance with the established methods of civil law courses offered by the Faculty of Law at the University of Cuzco.

The following year, the editorial offices of José Merino Reyna issued, as part of its series on Peruvian laws and codes, the annotated work of Félix Portocarrero Olave,⁴³ chief judge of the Superior Court of Lima. The work is based on the civil code text printed in 1957 under the direction of the famous Mexican law publisher, José M. Cajica (see History and Text, footnote 16). Much later Judge Portocarrero's work was updated and reissued in two volumes by the

³⁶ ———. *El derecho de propiedad en los bienes muebles*. Lima, Cía. de Impresiones y Publicidad, 1945. 124 p.

———. *Los Derechos Reales*. Lima [Edit. Castrillón Silva] 1952- v.; 2.ed., corr. y aum. 1958- v.; 3.ed. 1965- v. (Instituciones de derecho civil)

³⁷ ———. *El derecho de las obligaciones*. Lima [Edit. Castrillón Silva] 1954-55. 2-3 v. (Instituciones de derecho civil) 2.ed., corr. y aum. 1963. 2 v.

³⁸ ———. *El derecho de retención*. Lima, Gil, 1949. 62 p.

³⁹ ———. *El daño aquiliano en la legislación del Perú*. Lima, 1962. 130 p. [Also appearing as a separata in *La Revista de Derecho y Ciencias Políticas* (Lima) no. 3 (1961) and no. 1 (1962)]

⁴⁰ ———. *Cesión de Créditos*. Lima, Univ. Nacional Mayor de San Marcos [1964?] 91 p. (Univ. Nacional Mayor de San Marcos. Departamento de Publicaciones. Biblioteca de estudios superiores)

⁴¹ ———. *La mora del acreedor*. Lima [Edit. San Marcos] 1958. 67 p. [Also appearing as a separata in *La Revista de La Facultad de Derecho y Ciencias Políticas* (Lima) 1957]

⁴² Olazábal Feijoo, Leoncio. *Derecho civil; nociones generales de derecho, personas, acto jurídico*. [1.ed.?] 2.ed. Cuzco, Edit. "Garcilaso," 1961. 573 p.

⁴³ Portocarrero Olave, Félix, ed. *Código Civil*. [Concordancias y leyes modificatorias. Lima, Edit. Jurídica, 1962] 980 p.; 2.ed. (?) 3.ed. 1966. 2 v. (Leyes y códigos peruanos) [Title varies]

same publisher. The first volume consists of the annotated code with pertinent annexes, including the Montevideo Treaty and the Bustamante Code. The second volume contains appendixes of all laws, supreme decrees, and resolutions prevailing as of 1966 on such fields as civil registries, foundations, water, health, mining, expropriation, minors and juvenile courts, Indians, and other topics related to the civil code provisions which are most frequently consulted by legal practitioners and researchers. Jesús Víctor Fajardo,⁴⁴ of the publishing firm of Editorial Mercurio, S.A., issued a similar work.

A work by José Montenegro Baca⁴⁵ provides marginalia summaries of the code's individual provisions. Except for this innovation, the work is patterned after the Merino Reyna publications and the original authoritative works of Dr. Aparicio y Gómez Sánchez.

In 1963 Prof. H. Gustavo Palacio Pimentel wrote a treatise⁴⁶ using the same approach employed by Dr. Olazábal, a colleague of his at the University of Cuzco, and giving the same treatment of this subject as did the more renowned authors referred to earlier in this section. The professor also correlated the provisions of the civil code with those of the new agrarian reform law.⁴⁷ In light of the revolutionary changes introduced through current land legislation, the significance of this recent work on the civil code cannot be understated. Lastly, the Civil Code is the basis of F. Bonilla's 1970 work which has not yet been acquired by the Library of Congress.⁴⁸

SPECIAL SUBJECTS

Most source materials dealing with specific divisions of the civil code or with individual provisions thereof are monographic pamphlets or law theses. A great number of these materials are footnoted with only general comments on their contents. As in the previous section, only major works and a few authoritative, practical, or recent sources belonging to this classification of material receive

⁴⁴ Fajardo, Jesús Víctor, *ed. Código Civil; concordancias y últimas reformas*. Lima, Edit. Mercurio, S.A. [1957?] 302 p.; 2.ed. [1959?] 486 p.; 3.ed. [196-?] 484 p.; 4.ed. (?) 5.ed. [1966] 402 p. [Title varies]

⁴⁵ Montenegro Baca, José, *ed. Código Civil del Perú, con sus reformas y con síntesis marginales de cada artículo*. Trujillo, Libr. y Edit. "Bolivariana" [1962] 354 p. (Códigos del Perú)

⁴⁶ Palacio Pimentel, H. Gustavo. *Elementos de derecho civil peruano*. Cuzco [Tall. Gráficos de la Edit. H. G. Rozas, S.A.] 1963. 651 p.

⁴⁷ ———. *El Código Civil y la reforma agraria (concordancias)* Lima, Edit. Arica [1970] 402 p.

⁴⁸ Bonilla, F., *ed. Código Civil; con las últimas modificaciones introducidas actualmente y en vigencia*. [Lima, Edit. Litografica, 1970] 332 p. (Legislación Nacional)

special mention or individual description. Moreover, the great volume of items on special subjects requires that the selection of works on a given topic be limited to a representative number. These works are divided about equally between old and new publications which deal for the most part with the 1936 Code now in force. Their presentation follows, as far as practicable, the topical divisions of the code.

A study of Peruvian civil law principles, embodied either in the preliminary title or under the different books of both the old and new civil code, provides the serious researcher with the necessary perspective to understand the nature and scope of the subject. Works to be consulted involve the modern concept of civil law; ¹ the effect, application,² and irretroactivity ³ of the code; its uniform application;⁴ and the concept of "abuse of law," or relativity of rights.⁵

*Persons.*⁶

In ancient Rome, the Law of Persons considered "personality" as relating to the quality of a man, i.e., his station in life. For example, a free man had personality; a slave had none. In modern times, however, personality is an attribute of all persons, and according to the Peruvian Civil Code, it is determined at birth. Citing Spanish authorities on the subject, Peruvian writers generally agree that a person is every physical or moral, natural or juridical creature capable of

¹ Gibson, Carlos D. *El concepto científico moderno del derecho civil y la escuela positiva*. Arequipa, 1905. [Thesis. Universidad de Arequipa]

Grisolle y Tirado, M.A. *Ensayo sobre el elemento individual y el elemento social en la reforma del código civil*. Lima, 1942. [Thesis]

² Torres, Octavio. *La aplicación del derecho y el nuevo Código Civil*. Lima, 1940. [Thesis]

³ Neves Valdez, Roberto. *Irretroactividad del código civil*. Lima, 1940. [Thesis]

⁴ García Calderón, Manuel. *Sujeción de todos los habitantes del país a una legislación igual y uniforme sin privilegios ni excepciones que favorezcan el derecho de uno con daño de los intereses ajenos*. Lima, 1876.

⁵ Alzamora Valdéz, Javier. *El abuso del derecho*. Lima, 1939. [Thesis. Universidad Católica]

Alvarez Benavides, Artemio. *El abuso del derecho*. Lima, 1940. [Thesis]

Eguiguren, Luis Antonio. *El abuso del derecho; artículo II del título preliminar del código civil*. Lima, 1948. 10[1] p.

⁶ *Persons:*

Jiménez, Plácido. *Derecho civil, de las personas; fundamentos doctrinarios y anotaciones y referencias al proyecto del nuevo Código Civil . . .* Ed. de los alumnos Horacio Céspedes, Eduardo Recoba y Enrique Jerá. Lima, 1936. 374 p.

Yllanes, José S. *El estudio de las personas naturales del nuevo Código Civil*. Lima, 1937. [Thesis]

Zaldívar la Torre, Gonzalo. *La historia civil de las personas*. Lima, 1938. [Thesis]

Avendaño, L., and Carlos A. Bambarén. *Sordomudez y capacidad civil*. Lima, Impr. La Cotera, 1940. 14 p.

Portocarrero, Alfredo. *La identificación de las personas naturales*. Lima, 1940. [Thesis]

being the subject of legal relations. On the other hand, personality implies the ability to be the subject, active or passive, of juridical relations. Personality, therefore, is strictly a legal concept which may be extended to an artificial person, such as a company or corporation; it is intimately related to civil capacity.

Literature on women⁷ and civil registries,⁸ topics related to persons, is listed below. Of particular merit is the work of Pedro Génaro Delgado, which is a complete collection, as of 1946, of code provisions and other legislative enactments touching on women's rights in the civil, commercial, and political spheres, as well as on the rights of minors. The practicality of the work is underscored

⁷ *Women's Rights:*

Castro, César. *¿Se puede conceder a la mujer peruana los mismos derechos civiles que al hombre?* Lima, 1918. [Thesis]

Huguet, Andrés A. *Reformas del código civil. La mujer y el derecho civil moderno.* Lima, Impr. Artística, 1920. 46 p.

Távora, José J. *El patrimonio de la mujer casada en nuestro derecho civil y las capitulaciones matrimoniales.* Lima, 1920. [Thesis]

Delgado, Pedro Génaro. *La mujer ante la ley o el abogado de la mujer peruana que comprende todas las disposiciones de los códigos civil, penal, de comercio y de procedimientos en materia civil y criminal referentes a la mujer, y las leyes amparadoras de sus derechos y de los derechos de los menores dictadas hasta la fecha.* Lima, Sanmartí y Cía., 1922. 509 p.

———. *Suplemento.* [1]- Lima, Oficina Tip. "La Equitativa," 1937-.

Solf García Calderón, Alfredo. *Bienes reservados de la mujer casada.* Lima, 1932. [Thesis]

Elías, Víctor R. *Restricciones que contiene nuestro código civil a los derechos de la mujer.* Lima, 1933. [Thesis]

González Suárez, José Luis. "Los bienes reservados de la mujer casada." In *La Revista del Foro* (Lima) July-Dec. 1941 and Oct.-Dec. 1942. [Appearing in various issues]

Cuadros E., Raúl. *Los derechos de la mujer; divulgación de la ley.* [Lima] Esuala [sic] Tip. Salesiana [1951] 109 p.

Patrón Faura, Pedro. *Legislación de la mujer peruana, prontuario; normas contenidas en la Constitución, en los códigos y en otras disposiciones relacionadas con la mujer, en general, y en especial con las madres de familia y las empleadas y obreras al servicio del Estado o de empresas particulares.* [Lima] 1947. 124 p.; another ed. 1955. 171 p.

⁸ *Civil Registries:*

Belaúnde y Díez Canseco, Rafael. *Algunas ideas sobre los registros de estado civil. ¿Se puede inscribir en ellos partidos correspondientes a años anteriores a su establecimiento?* Lima, 1920. [Thesis]

Ferrandiz M., Alberto. *Reforma de los registros de estado civil.* Lima, 1927. [Thesis]

Portugal, Félix W. *Algunas sugerencias para la reforma y reorganización de los registros del estado civil del Perú.* Lima, 1927.

Arca Parró, Alberto. *La protección de la personalidad del nombre basada en la organización científica de un registro nacional de identificación y del estado civil.* Lima, 1931. [Thesis]

Arrieta S., Raúl A. *Los registros del estado civil.* Lima, Impr. "Lima," 1940. 79 p.

Patrón Faura, Pedro, ed. *Legislación peruana sobre registros del Estado Civil; índice clasificada por materias.* Lima, 1949. 92 p.

Mariátegui-Sáenz, Augusto, ed. *Registros del estado civil; disposiciones del Código Civil, reglamento para la organización y funcionamiento de los registros del estado civil, expedido por la Corte Suprema, el 15 de julio de 1937, concordancias con los códigos de procedimientos civiles, penal y procedimientos penales, reglamento consular: capítulo XVII, leyes, decretos y resoluciones conexas, resoluciones de la Corte Suprema, formularios.* Lima, Inst. Peruano de Estadística, 1952. 44 p.

by the inclusion of pertinent legal forms. The compilation by Dr. Pedro Patrón Faura should be consulted for legal texts updated through 1955.

*Family Law.*⁹

This heading covers domestic relations, in general, and the subtopics of legal separation, marriage and divorce, matrimonial property regimes, donations in consideration of marriage and dowry, family homesteads, paternity and filiation, adoption, guardianship, curatorship, and other matters related to children. Among the items on marriage and divorce and general domestic relations, those of Drs. César Toledo Más, Emilio F. Valverde, and Héctor Cornejo Chávez are outstanding. Toledo Más' work was originally presented in 1938 to the Law School of the Catholic University as a doctoral thesis on all aspects of marriage: impediments, ceremony, registration, annulment, dowry, and community property. It was subsequently published commercially. The studies by Valverde and Cornejo Chávez are very detailed and scholarly. Both provide historical sketches and textual analyses of the law. These authors contributed erudite treatises on succession (*infra*).

⁹ *Family Law:*

(a) Marriage, divorce, etc.

Delgado, Pedro Génaro. *Régimenes conyugales y el contrato por correspondencia* . . . Lima, Impr. "La Equitativa," 1913. 32 p. [Thesis. Universidad Mayor de San Marcos]

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*Wills and Succession.*¹⁰

Civil law rules on succession are generally more complex, although better defined, than common law rules. In Peru, a person's estate is transmitted at the time of death to specific heirs described in the code. There are rights of representation in favor of relatives in the descending line and, to a limited extent, in the collateral line. The code bars certain persons from becoming heirs or legatees on grounds of unworthiness, although such grounds may be expressly waived by the testator in some cases. In the absence of a will, or where there is a defective will, the code declares certain relatives as compulsory or legal heirs. An interesting provision of the code relates to the successional rights of illegitimate children. When all the legal heirs are illegitimate children, they inherit in equal shares; however, when they concur with legitimate children, they inherit only half the share of a legitimate child. Works singled out for description are by the illustrious Luis Echeopar García, a law professor and former minister of finance, Rómulo E. Lanatta, a young law professor, and Enrique Holgado Valer, a jurist and law professor. Collectively, their treatises cover the entire third book of the civil code, involving, among other topics, the rights of widows, inheritance by natural and adopted children, rights of survivorship, and the legal development of testate and intestate institutions and their philosophical basis. The citations to both foreign and national authorities and analytical indexes are immensely useful. Dr. Echeopar García has also written on conjugal property (supra).

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*Property.*¹¹

The code defines two broad categories of property: real property (inmuebles) and personal property (muebles). The former category includes lands, real estate (predios), mines, public waters, vessels and aircraft, railways, docks and wharves, public service concessions, and real property rights duly recorded and registered. The latter category embraces anything which can be appropriated or moved at will, including temporary constructions made on another's property; company or business shares; literary, artistic, and industrial property rights; rights to money or services; and unregistered real property. Under this particular subject division of the code, the sources cited relate to matters such as possession, ownership, joint ownership, usufruct, easements, servitudes, leases or landlord-tenant relations, prescription, expropriation, urbanization, copyright, mortgage, recording and registration, and the Torrens system. The most noteworthy of the contributions in the legal literature on property appears to be that penned by the distinguished Eleodoro Romero Romaña. This work, originally appearing in one volume, was later revised and expanded into two volumes. It is typical of many Peruvian legal works in that it originated from classroom lectures and was later printed for national use. The book comprehensively covers the institutions and problems previously mentioned.

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*Obligations and Contracts.*¹²

Good faith and mutual intent of contractual parties are basic to the concept of contracts under Peruvian law. Although when one party gives money in earnest to another there is a presumption of finality or conclusiveness of the contract, a contract is deemed concluded only when there has been a meeting of the minds as to all essential points (*extremos*). The many classes of obligations enumerated in the earlier section are discharged in one of several ways: subrogation, novation, compensation (*set-off*), condonation, merger of rights, compromise, or mutual consent.

Dolus in civil law necessarily produces liability for damages, because of the element of willfulness. Negligence, on the other hand, may not necessarily produce the same liability. Among the reference tools cited, Dean Alzamora Silva's 1936 doctoral thesis on this subject is recommended reading. Although the dean, holder of a doctorate in law, philosophy, and literature, distinguished himself as a constitutionalist, he wrote extensively in other fields. His bachelor of law thesis, also written in 1926, involved an aspect of civil law, that of property recording and registration.

Richard M. Boesen's *English Analysis from the Spanish Originals of Peruvian Law and Legislation Affecting Business Operations in Peru . . .* is an excellent tool for the American practitioner. The book contains a special chapter on contracts (see also commercial law). A compact and easy reference source is that by Dr. René Boggio Amat y León, former dean of the Faculty of Law of San Marcos University. His 1963 pocketbook edition provides what he labels a "synthesis" of the different types and classes of obligations. In 1940 the same author wrote his law thesis on juridical acts concerning obligations and contracts. A recent work which should be very helpful in ascertaining the latest legal developments in this field is by Manuel J. Gamarra Pereda who arranges his commentary of the fifth book of the 1963 Civil Code in an article-by-article order, with marginal notes.

¹² *Obligations and contracts:*

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Civil Procedure

History and Texts

In addition to the ephemeral and controversial procedural code imposed from Bolivia in the 1800's, Peru has adopted two codes of its own—in 1852 and again in 1912.

In colonial Peru, the Spanish procedural laws regulated the administration of justice in the Audiencia de Lima and in the lower tribunals. Procedure to be followed in special types of courts or cases was provided in such sources as the *Ordenanzas Militares*, *Ordenanzas de Toledo*, *Recopilación de Leyes de las Indias*, *Ordenanzas de Intendentes*, and *Ordenanzas de Minería*. These laws continued to be observed in Peru after independence, although they were modified to conform with the changes made in the judicial system and the political administration of the developing sovereign nation.

The first major change took place with the adoption of the Bolivian Code of Procedure, or the Santa-Cruz Code, which was promulgated during the latter part of 1836¹ for use in the Peruvian areas of the ill-fated Peru-Bolivian Confederation. Observance of this code and of the other Santa-Cruz codes was suspended, however, in 1838 just before the termination of the confederation. By a Decree of July 31, 1838, the Spanish procedural legislation was reinstated (see chapter on civil law).

Governmental changes brought about a proliferation of special laws and regulations making it more difficult to apply the antiquated colonial legislation. Attempts to codify the civil laws and laws of civil procedure were initiated more or less simultaneously. By Law of October 9, 1845, a codification commission

¹ *Código Santa-Cruz de Procedimientos Judiciales del estado Nor-Peruano*. Ed. oficial. Lima, Impr. de Eusebio Aranda, 1836. 166 p.

Código de Procedimientos Judiciales del estado Sud-Peruano. Cuzco, Impr. Libre por Pedro Evaristo González, 1836. 152 p.

was constituted to draw up one code for each. The commission succeeded in drafting a civil procedure code² first, which was submitted to the Supreme Court for its consideration and opinion. By a Decree of November 22, 1850, the final draft was ordered published. On June 12, 1851, the Congress created a joint legislative committee consisting of two senators and five deputies to revise the draft. Eventually, on July 28, 1852, the modified version³ was promulgated, together with the Civil Code, by President Echenique. An unofficial, unannotated text was published by M. A. Fuentes and Benito Gil in 1873,⁴ together with pertinent modifying laws.

Commenting on Peru's first Code of Civil Procedure, Dr. Percy MacLean y Estenós, fiscal of the Superior Court of Junín, states:

... the procedural law of Peru, established on the bases and principles of Spanish laws, which were consecrated by three centuries of colonial régime, suffered from a lack of unity, a complication of form, a heterogeneity of terms, an abundance of dilatory appeals, and imprecise definitions which, instead of clarifying, cast a certain ambiguity and doubt on the legal provisions.⁵

In 1889 a five-man committee, composed of Drs. Juan Luna, Simón Gregorio Paredes, José Jorge Loayza, Manuel Santos Pasapera, and Francisco Mariano Fernández, was appointed to draft a new civil procedural code. This committee's draft never became law, although it appeared in published form.⁶

On April 15, 1904, another committee was convened for the same purpose. Its members consisted of Anselmo Barreto, Luis F. Villarán, Pedro Carlos Olacoea, José Matías Manzanilla, Manuel Vicente Villarán, Víctor M. Marútua, and Plácido Jiménez. Later two other members, Francisco Eguiguren and Alfredo Solf y Muro, were added. This committee used the Spanish Code of 1881 as its principal model. They labored four years until, in 1908, a revised code with a proposed organic law on the judiciary and a law on notaries was

² *Proyecto del código de enjuiciamientos en materia civil presentado al gobierno por los individuos de la comisión nombrada en cumplimiento de la Ley del 9 de Octubre de 1845*. Lima [Impr. del "Comercio," por J. M. Monterola] 1846. 146, 14 p.

Continuación del proyecto del código de enjuiciamientos en materia civil. Lima, Impr. de E. Aranda, 1846. 146 p., 1 l., 14, [2] p.

³ *Código de Enjuiciamientos en Materia Civil del Perú*. Lima, Impr. del Gobierno por Eusebio Aranda. 1852. 309 p.

⁴ *Código de Enjuiciamientos en Materia Civil con las modificaciones hechas después de su publicación*. Lima, M.A. Fuentes y B. Gil [1873?] 363 p.

⁵ MacLean y Estenós, Percy. *Historia del derecho procesal en el Perú*. Buenos Aires, 1945. p. 10.

⁶ *Proyecto de código de procedimientos en materia civil para la República del Perú*. Lima, Impr. de J. Francisco Solís. 1890.

ready for presentation to the Congress. The *exposición de motivos*⁷ of the committee which accompanied the draft code⁸ was published separately. All three drafts were approved, that of the code by Law 1510 dated December 4, 1911. On December 15 of the following year, President Leguía promulgated the new Code of Civil Procedure to become effective July 28, 1912.⁹

Since the adoption of a modern Civil Code in 1936, harmonizing of the outmoded provisions of the adjective law with those of the new substantive code has been difficult. Despite this, the 1912 Procedural Code has remained in force to the present time with important modifying legislation superimposed in a patchwork fashion. This is not to say, however, that revision attempts have not been made. By a Supreme Decree dated July 12, 1941, a new commission was authorized, and subsequently constituted on March 31, 1942, to conduct studies toward a new code for presentation to the Congress. Members were carefully selected from a group of outstanding jurists and acknowledged legal authorities to work under the chairmanship of the then minister of justice, Lino Cornejo. The committee members were Dr. Anselmo Barreto, justice of the Supreme Court; Ernesto Araujo Álvarez, a fiscal in the Supreme Court and law professor; Germán Aparicio y Gómez Sánchez, justice of the Superior Court of Lima; and Manuel C. Gallagher, president of the Colegio de Abogados of Lima. Upon the death of Dr. Álvarez in 1944, he was replaced by another fiscal in the Supreme Court, Dr. Fernando E. Palacios. Apparently, Minister Cornejo was later appointed minister of education, but to maintain continuity and uniformity in the committee's work, he was retained as chairman.

The committee began work on April 8, 1942, and continued working until January 1949. Partial records of its proceedings may be found in the 1943 and 1944 issues of *La Revista del Foro*, a legal periodical, and the complete records were published in several volumes from 1944 to 1948.¹⁰ The full text of the draft code was published in 1949.¹¹ It is difficult to say at this time, in the light of available reference sources, whether or not this proposed code will ever be adopted to replace the 1912 Code now in force.

⁷ *Exposición de motivos del código de procedimientos civiles que presenta al poder ejecutivo el Comité de Reforma Procesal*. Lima, Impr. Torres Aguirre, 1909.

⁸ *Proyecto de código de procedimientos civiles que presenta al poder ejecutivo el Comité de Reforma Procesal*. Lima, 15 de julio de 1909. Lima, Libr. é Impr. Gil, 1909. 164 p.

⁹ *Código de Procedimientos Civiles*. Lima, Sanmartí y Cía., 1914. 243 p.

Exposición de motivos del Código de Procedimientos Civiles formulada por el Comité de Reforma Procesal. Lima, Sanmartí y Cía., 1912. 397 p.

¹⁰ *Actas de las sesiones de la Comisión Reformadora del Código de Procedimientos Civiles*. Lima, Gil, S.A. [1944-] 9 v.

¹¹ *Proyecto del código de procedimiento civil que presenta la comisión ad hoc nombrada por el Supremo Gobierno*. Lima, Gil, 1949. 243 p.

The Code of Civil Procedure, as amended, covers all proceedings of a civil nature, as well as actions of commercial character. It is divided into three main sections. The first part contains provisions common to all types of proceedings, the second deals specifically with different types of legal proceedings or lawsuits, and the third relates to special “noncontentious” proceedings.

The common provisions deal with the accessibility of judicial processes to all Peruvians enjoying civil rights, the judicial role of the lawyer, the competency of and challenges against a judge, all preliminary steps that should be undertaken or observed before filing suit, court orders, and conclusion of judicial hearings.

Different kinds of lawsuits include the *juicio ordinario* or the basic proceeding which is usually the foundation for further proceedings, and the *juicio ejecutivo* which involves an action to enforce compliance with a duty or obligation called for in a document, such as a promissory note, bill of exchange, and other private or public instruments as are specified in the code.

Noncontentious proceedings are special hearings held to legalize certain procedures and requirements, as in a petition for declaration of heirs in an intestate case.

The code defines various categories of evidence such as the sworn oral testimony of the parties or their witnesses, judicial ocular inspection of the subject of litigation, public and private instruments, and expert opinion.

Generally, there is a two-tiered system of appeals. When all steps—the filing of the complaint, the answer thereto, the presentation and examination of evidence, summing up by the contending parties, and the judge’s decision—have been concluded in the court of first instance, either party dissatisfied with the decision can appeal to the Superior Court, which conducts a new hearing. If the decision of the court of second instance still proves unsatisfactory to either party, a second appeal lies with the Supreme Court which will either confirm or reverse the Superior Court’s decision (see also chapter on the judicial system).

Literature

The earliest contributions to the legal literature on civil procedure are the various editions of a practice manual by Dr. Francisco Gutiérrez de Escobar,¹ according to José M. Moreno who, in 1846, reissued the manual with a separate

¹ Gutiérrez de Escobar, Francisco. *Prontuario de los juicios: su orden, sustanciación e incidencias. Escrito en Charcas el año de mil setecientos ochenta i dos, . . .* Santiago [de Chile] Impr. de Los Tribunales, 1846. 148 p.

volume, entitled *Suplemento á Pratica de Gutiérrez*, containing the principal laws and regulations modifying the text of the original work. Dr. Gutiérrez' work, first printed in Charcas in 1782 during the Spanish régime and reprinted in Lima in 1818, was based on Spanish procedure and practice. Apparently copies of these early editions and the supplement are no longer available.

Gabriel Gutiérrez' early work, which appeared in 1849, is of a similar nature but is more adaptable to Peruvian legislation and practice in both civil and criminal litigation.² Its extensive footnotes show a predominance of Spanish authorities and legal sources. Popular among the members of the bar, it required a second edition.

Before the promulgation of the 1852 Code, Juan Oviedo,³ a former minister of justice, began work on a practice manual based on what was the prevailing Spanish and Peruvian legislation in point. This manual was not published until after the 1852 Code had become effective. In subsequent editions, therefore, the author had to revise the initial edition totally to reflect the actual status of Peruvian adjective law.

Professor Silva Santistéban treated the 1852 Code exegetically in an 1860 work⁴ which he revised four years later to include both civil and penal procedure. The text of the same code was also issued in 1869 with notes and citations to pertinent provisions in other codes and laws, as the joint work of the two respected jurists, Drs. Fuentes and de la Lama. An enlarged edition followed.⁵ Much later Dr. de la Lama issued, in his name alone, annotated texts of the Codes of Civil Procedure of 1852⁶ and 1912.⁷ A second edition of the latter was published two years later by Pedro C. Goitizolo, who correlated the provisions of the new code with the previous one, and added notes of his own. The appendix to the first edition contains texts of supplementary laws through December 31, 1893, and that of the second through September 30, 1914. The present 1912 Code was also edited, with historical notes, by Dr. de la Lama in

² Gutiérrez, Gabriel. *Práctica forense peruana arreglada al estado presente de la legislación*. Impr. del Correo Peruano, 1849. 249 p. 2.ed., reimpresso. 1855. 249 p. [Printer varies]

³ Oviedo, Juan. *Práctica forense-peruana arreglada a la nueva legislación*. Lima. 1853: 2.ed. 1860. 269 p.; 3.ed. 1871. 298 p. [Printer varies]

⁴ Silva Santistéban, José. *Curso de práctica forense*. Lima, Impr. del Autor, 1860. 226 p.; 2.ed. 1864. 270 p.

⁵ Fuentes, M.A., and M.A. de la Lama. *Código de Enjuiciamientos en Materia Civil con notas y concordancias*. Lima. Impr. del Estado, 1869. 438 p.; another ed. 1870. 476 p.

⁶ Lama, M.A. de la. *Código de Enjuiciamientos en Materia Civil*. Lima, Impr. y Libr. Gil, 1894. 703 p.

⁷ ———. ———. Lima, Impr. y Libr. Gil, 1912; 2.ed., corr. y aum. por el doctor Pedro C. Goitizolo. 1914. 1,062 p.

1922.⁸ Other contributions of this prolific writer include: (1) a comprehensive treatise on forensic practice,⁹ published between 1872 and 1877, and adapted to the administration of justice in both civil and penal cases. The volumes contain applicable forms and notes on comparative European legislation. Four editions of this work were published, with varying titles; (2) an essay on the special procedure involving appeals for nullity;¹⁰ and (3) another work on forensics designed for law students.¹¹

In 1866 Judge Hilario Liendo annotated certain provisions of the 1852 Procedural Code and, for easy consultation, added an analytical index.¹²

A practice manual, containing information and laws for notaries public, was published by Guillermo A. Seoane,¹³ then an employee of the Supreme Court. A similar manual, dealing with procedural legislation and legal forms, was published by Constantino Fajardo¹⁴ who later also worked on the 1912 Code¹⁵ and produced two separate analytical indexes¹⁶ to this code.

Annotated works on the 1912 Code, similar to that of Dr. de la Lama's, were issued by his distinguished colleagues, Drs. Calle,¹⁷ Cornejo,¹⁸ Eguiguren,¹⁹ and Samanamú.²⁰ Dr. Samanamú's appears to be the most extensive.

⁸ ———. *Código de Procedimientos Civiles con nociones históricas*. Lima, Libr. é Impr. Gil, 1922. 1 v.

⁹ ———. *Elementos de teoría del enjuiciamiento y práctica forense peruana*. Lima, Impr. del Estado, 1872-77. 4 v.: 2.ed. 1879- : 3.ed. 1902-10. 4 v.: 4.ed. 1903-10. 4 v.

¹⁰ ———. *Casos de improcedencia del recurso de nulidad arreglados a las leyes y al espíritu del supremo decreto . . .* Lima, Benito Gil. 1884. 88 p.

¹¹ *Texto de retórico forense para los estudiantes de jurisprudencia*. Lima, Gil, 1896. 423 p. [Cover title: 1901]

¹² Liendo, Hilario. *Notas al Código de Enjuiciamiento Civil, con un índice analítico por orden alfabético*. Lima, Impr. y Libr. de Benito Gil. 1886. 122 p.

¹³ Seoane, Guillermo A. *Manual práctica y formulario del notario público*. Lima, E. Rosay, 1900. 192 p.

¹⁴ Fajardo, Constantino. *Manual del litigante y formulario para los escribanos de estado*. Lima, Libr. é Impr. Gil, 1901. 352 p.

¹⁵ ———. ———. *Arreglado conforme al nuevo Código de Procedimientos Civiles*. Lima, Orellana y Cía., 1912. 199 p.

¹⁶ ———. ———. *Índice alfabético auxiliar del Código de Procedimientos Civiles*. Lima, Lit. Tip. T. Scheuch [1912] 20 p.

———. ———. *Índice alfabético analítico del Código de Procedimientos Civiles*. Lima, Orellana y Cía., 1913. 59 p.

¹⁷ Calle, Juan José. *Código de Procedimientos Civiles con exposición, notas . . .* Lima, Tip. de "El Lucero," 1912. 911 p.

¹⁸ Cornejo, Angel Gustavo. *Código de Procedimientos Civiles*. Lima, E. Rosay, 1912. 2 v.

¹⁹ Eguiguren, Francisco J. *Código de Procedimientos Civiles*. Lima, Impr. y Libr. Sanmartí y Cía., 1914. p. 83-321. [Includes: *Ley orgánica del poder judicial*]

²⁰ Samanamú, Francisco. *Prontuario de procedimientos civiles del Perú conforme al código y leyes vigentes*. Lima, Sanmartí y Cía., 1917. 794 p.

Dr. Alayza y Paz Soldán, former Lima judge, cabinet member, and prolific author on both legal and political matters, contributed to the literature on civil procedure by annotating the code. In addition to commentaries, he included convenient marginal notes printed in bold-face type.²¹ Another item to his credit is a textbook in which the sequence of discussion follows that of the order of topics established in the procedural code.²² This last work appeared in a 1963 and a 1969 edition. Roger Zavaleta Cruzado, law professor at the University of Trujillo, issued these editions, faithfully transcribing Dr. Alayza y Paz Soldán's commentaries and identifying them from his own by a different type and size of print. The rights and obligations of pledgor and pledgee in agricultural loans, along with the law on mortgage banks and foreclosure proceedings, are covered in these latest works.

By far the most comprehensive work on civil procedure is that of Dr. Julián Guillermo Romero.²³ A multivolume publication, it covers in great detail every phase of this branch of law including, but not limited to, analysis of code provisions, supportive laws, and practices.

Diómedes Arias Schreiber,²⁴ professor of civil procedure at San Marcos University, wrote a textbook on the elementary principles of his subject for the use of his students.

More contemporaneous works describing the 1912 Code of Civil Procedure were contributed by the eminent jurists-authors, Darío Rodríguez Llerena²⁵ and Germán Aparicio y Gómez Sánchez.²⁶ The former's work includes copious case law citations and extracts from other authorities in the field, and the latter's work, which came out in several editions between the 1930's and the late 1940's, contains materials divided into antecedent legislation, bibliography, case law, and corollary legislation.

Dr. Carlos A. Anchorena issued a commentary on the code in which he sug-

²¹ Alayza y Paz Soldán, Toribio. *Práctica procesal explicaciones del Código de Procedimientos Civiles*. Lima, Sanmartí y Cía. [1916?] 159 p.

²² ———. *El procedimiento civil en e/Perú. (Curso universitario)* Lima, Libr. é Impr. Gil, S.A., 1935. 469 p.; 2.ed. [1964] 474 p.; 3.ed., anotada y concordada. 1969. 536 p. [Printer varies]

²³ Romeró, Julián Guillermo. *Estudios de legislación procesal*. Lima, Tip. "El Lucero," 1914-28. 6 v. [Imprint varies]

²⁴ Arias Schreiber, Diómedes. *Derecho procesal civil. Primer curso*. Lima, Edit. Lima, 1932. 336 p.

²⁵ Rodríguez Llerena, Darío. *Código de Procedimientos Civiles concordado y anotado*. Chiclayo, Libr. é Impr. Mendoza, 1932-33. 2 v. [Cover title of v. 2: 1934]

²⁶ Aparicio y Gómez Sánchez, Germán. *Código de Procedimientos Civiles. Concordancias*. Lima [Tall. Gráf. de la Penitenciaría] 1931?-35. 2 v., with supplement; 2.ed. 1938. 2 v.; 3.ed. 1947- 1 v. [Printer varies]

gests to both attorneys and members of the judiciary certain time-saving procedural steps which may be taken within the requirements of the present law and others which he recommends be the subject of necessary legislation.²⁷

Judge Remigio Pino Carpio commenced work in 1940 on what he hoped to be a monumental 13-volume treatise on the Code of Civil Procedure,²⁸ with an all-embracing coverage involving not only adjective law and satellite materials but also substantive laws. He published the first volume, in which he calls attention to some "desirable" changes in the existing legislation, and a second volume followed. So far as can be ascertained, however, he was never able to carry out his plans for the remaining volumes. In the early sixties, however, the judge started a new series²⁹ on the same subject and to date has published four scholarly volumes, the latest one bearing a 1965 imprint.

A brief essay, published in pamphlet form by Sebastián de S. Peixoto³⁰ for the guidance of law students and young professionals, treats of the more common cases in civil practice and relates the author's own experiences.

An interesting article by two justices of the Supreme Court, Carlos Zavala Loaiza and Germán Arenas,³¹ appears in a 1946 issue of a legal periodical, the *Revista Peruana de Ciencias Jurídicas*. Excerpted from annual reports published by these justices in 1942 and 1944 in the Supreme Court organ, *Anales Judiciales*, the article deals with the need for reform in the existing procedural legislation.

A selection of law school theses relating to the range of topics falling under civil procedure is listed below without further comment.³²

²⁷ Anchorena, Carlos A. *Por la pronta y buena administración de justicia. Comentarios y crítica de algunos artículos del Código de Procedimientos Civiles. Consejos prácticos a los abogados y jueces menores. Formularios de escritos, proveídos y resoluciones judiciales; así como de oficio, notificaciones, actas y demás actuaciones judiciales*. Lima, Edit. "Atlántida" [1939] 289 [1] p.

²⁸ Pino Carpio, Remigio. *Código de Procedimientos Civiles en 13 tomos. Interpretado, comentado y concordado con el nuevo Código Civil y con las de procedimiento especial*. Arequipa, Esc. Tip. Salesiana, 1940-41. 2 v. in 1.

²⁹ ———. *Nociones de derecho procesal y comentario del Código de Procedimientos Civiles* [Lima, Tip. Peruana, 1961-(65) 4 v.]

³⁰ Peixoto, Sebastián de S. *Mi Experiencia*. Iquitos. Impr.. Libr. y Papelería H. Reátegui [1942?] 88 p.

³¹ Zavala Loaiza, Carlos, and Germán Arenas. "Necesidad de reforma en la legislación procesal civil peruana." In *Revista Peruana de Ciencias Jurídicas* (Huancayo) May-June, 1946, p. 35-50.

³² Romero, Eleodoro. *El abandono de hecho en el juicio puede interponerse como excepción*. Lima, 1883. [Thesis]

Eguren, Jorge L. *¿Debe o no exigirse fianza de resúltas a los extranjeros demandantes?* Lima, 1884. [Thesis]

Prado y Ugarteche, Javier. *El proyecto legislativo de reforma del juicio ejecutivo*. Lima, 1894. [Thesis]

In 1948 José Manuel Valega³³ annotated the procedural code with cross-references to former codes and present laws in other fields. The following year Miguel Pacheco Medina compiled cases concerning counterclaims in which a plaintiff simultaneously assumes the double role of plaintiff and defendant.³⁴ Also in 1949 Francisco Sánchez Gamarra probed in an interesting exegetic work the rules relating to, among other matters, the role and qualifications of expert

Macedo, Eleodoro. *Absolución de la instancia*. Lima, 1903. [Thesis]

Paredes, Rómulo. *Reforma del procedimiento en materia civil y en lo relativo al juicio ordinario*. Lima, 1904. [Thesis]

Beraún F., Erasmo. *La prueba testifical en el juicio civil*. Lima, 1905. [Thesis]

Alzamora, Francisco de P. *Universalidad de juicio de quiebra*. Lima, 1908. [Thesis]

Sánchez Carrión, Héctor R. *El abandono de la instancia produce los efectos de cosa juzgada*. Lima, 1908. [Thesis]

Alfaro Calle, Víctor M. *Excepciones admisibles en las ejecuciones por letras de cambio y modificaciones en la acción cambiaria*. Lima, 1909. [Thesis]

Rivera y Piedra, J. *La confesión judicial como medio de prueba*. Lima, 1914. [Thesis]

Alva, Felipe. *La Prueba Testimonial*. Lima, 1916. [Thesis]

Rodríguez, Luis Guillermo. *El juicio de menor cuantía*. Lima, 1918. [Thesis]

Arancibia y Lastres, Jorge. *La justicia de menor cuantía en el Perú. Tres fundamentales reformas*. Lima, 1920. [Thesis]

Lazos Torres, Héctor. *La recusación y la excusa de los jueces en nuestra legislación procesal civil*. Lima, 1920. [Thesis]

Alcázar y Castro, Víctor Silvio del. *Reflexiones surgidas por los artículos 9 y 10 de nuestro Código de Procedimientos Civiles*. Lima, 1924. [Thesis]

Cárdenas y Olazábal, Abel. *Estudio de los arts. 312, 317, 1080 y 1082 del Código de Procedimientos Civiles*. Lima, 1924. [Thesis]

Barreto Gutiérrez, Ernesto. *El valor de la prueba testimonial*. Lima, 1925. [Thesis]

Chueca Silva, Luciano Gerardo. *Los peritos en juicios. El peritaje como prueba y como tasación*. Lima, 1926. [Thesis]

MacLean y Estenós, Roberto. *Principales reformas en el procedimiento del juicio ordinario*. Lima, 1927. [Thesis]

Aranibar Montes, José. *El Embargo Definitivo*. Lima, 1930. [Thesis]

Echecopar García, Luis. *Modificaciones introducidas por el nuevo código procesal en nuestra legislación sobre el cuasi-delito*. Lima, 1930. [Thesis]

Carneiro, Daniel A. *Juicios de Responsabilidad*. Lima, 1931. [Thesis]

León Corcuera, Marino. *Algunas consideraciones sobre el procedimiento oral en materia civil y su aplicación en nuestros juicios de menor cuantía*. Lima, 1937. [Thesis]

Bernuy Gómez, Oscar. *El Juicio Arbitral*. Lima, 1939. [Thesis]

Bravo Cevallos, Juan. *El divorcio en el derecho procesal*. Lima, 1939. [Thesis]

Salazar B., Carlos H. *El divorcio y sus aspectos procesales*. Lima, 1939. [Thesis]

Basurto Valdivia, Carlos F. *El juramento decisorio en nuestro Código de Procedimientos Civiles*. Lima, 1940. [Thesis]

Espinoza Mandujano, Honorio. *Prueba de Oficio*. Lima, 1940. [Thesis]

Ferrades, Julio M. *La confesión en el proceso civil*. Lima, 1940. [Thesis]

Fuente, Jorge de la. *Las excepciones dilatorias en nuestro sistema procesal*. Lima, 1941. [Thesis]

Lora, Juan de Dios. *Los interdictos en nuestra legislación procesal civil*. Lima, 1941. [Thesis]

³³ Valega, José Manuel, ed. *Código de Procedimientos Civiles*. Lima, D. Miranda [cover 1948] 232 p.

³⁴ Pacheco Medina, Miguel. *La reconvencción en la jurisprudencia peruana*. Lima, 1949. 52 p.

witnesses and the appraisal and evaluation in general of oral testimony.³⁵

From 1950 to the early 1960's, several more works appeared. Manuel Sánchez Palacios, a civil procedure professor at San Marcos University and history professor at the National College of Guadalupe, wrote textbooks for classroom use.³⁶ A colleague, Mario Alzamora Valdéz, produced a comparative treatise³⁷ looking into the scope and nature of judicial procedure, its characteristics, sources, application, and interpretation, giving historical background, including a history of the legal profession. This work was reprinted in 1959, the same year that Dr. Pedro Génaro Delgado issued a handbook on both procedural and substantive legal data concerning justices of the peace.³⁸ Legal forms are included and a system of concordance and cross-reference is employed to correlate the provisions of the codes and special laws.

During that same period, the famous compiler J. V. Fajardo³⁹ annotated the procedural code, and Dr. Guzmán Ferrer⁴⁰ produced a comprehensive two-volume work similar in format to his civil law books mentioned earlier. Dr. Guzmán's valuable contribution has been published in two editions, the last appearing in 1969.

In the mid-sixties, Dr. Merino Reyna updated the code,⁴¹ and Guillermo Pachas Torres issued a handy and practical reference source incorporating standard forms on pleadings and practice⁴² before courts of first instance, supported by relevant provisions in the procedural code.

So far as can be determined, the most recent contribution in this field is that

³⁵ Sánchez Gamarra, Francisco. *Exégesis de las reglas de la crítica (en la apreciación de la prueba testimonial)*. Lima, Cía. de Impresiones y Publicidad, 1949. 117 p.

³⁶ Sánchez Palacios, Manuel. *Derecho procesal civil; segundo curso, versión taquigráfica del curso dictado . . . en la Universidad Laylor [sic] de San Marcos*. Lima, 1939. 80 p. [Mimeographed]

———. *Derecho procesal civil (I[-II]curso)* [Lima, 1940?] 2 v. in 1. [Mimeographed]

———. *Derecho procesal civil; segundo curso*. Lima, Gil, 1950. 252 p.

³⁷ Alzamora Valdéz, Mario. *Derecho procesal civil: teoría general del proceso*. Lima, Tall. Gráf. de la Edit. Lumen. 1953. 340 p.; reprinted ed. 1959. 348 p. [Printer varies]

³⁸ Delgado, Pedro Génaro. *ed. Manual, reglamento y formulario de jueces de paz, comprende las cuestiones legales en materia civil y matria penal*. Lima, Libr. Patria, 1959. 287 p.

³⁹ Fajardo, J.V., *ed. Código de Procedimientos Civiles*. Lima, Edit. Mercurio [1955] 203 [5] p.; 2.ed. [1957?] 203 p.; 3.ed. [196-] 217 p. [Title varies]

⁴⁰ Guzmán Ferrer, Fernando, *ed. Código de Procedimientos Civiles; exposicion de motivos, antecedentes, concordancias, proyectos de reforma, legislación comparada, jurisprudencia*. Lima, 1961. 2 v.; 2.ed. no oficial. 1969. 2 v. (Legislación Peruana)

⁴¹ Merino Reyna, José, *ed. Código de Procedimientos Civiles*. [1.ed.?] 2.ed. Lima, Ediciones Jurídicas, 1966. 1,144 p. (Leyes y códigos peruanos. Colección Merino Reyna de leyes peruanos)

⁴² Pachas Torres, Guillermo. *Manual de resoluciones y formularios en el procedimiento civil*. Lima, 1966. 191 p.

of Ernesto Perla Velaochaga,⁴³ which is a "systematic exposition" of that section of the procedural code dealing with *juicio ordinario* (ordinary suit) and what it involves: the filing of the complaint, the answer, possible counterclaims, reception and examination of evidence, and all other steps leading to judgment and subsequent appeal, where necessary.

⁴³ Perla Velaochaga, Ernesto. *Juicio ordinario; exposición sistemática del Código de Procedimientos Civiles*. Lima [Impr. Edit. Lumen] 1968. 363 p.

Commercial Law

History and Texts

The Ordenanzas de Bilbao,¹ supplemented by local legislation on minor legal points, were the main body of laws which regulated the commerce in colonial Peru. These Spanish ordinances covered both substantive and procedural rules. They provided for a network of commercial tribunals or consulates and set forth the procedural regulations necessary for the administration of justice in litigations over mercantile affairs.

The Tribunal del Consulado in Lima was the principal commercial court in the viceroyalty, having been created in 1618, even before the adoption of the Bilbao ordinances. A set of special ordinances, adopted in 1627² for the tribunal's regulation, were observed in addition to those of Bilbao. Both bodies of law remained in effect long after Peru gained its independence.

Peru's relatively simple commercial relations in the early days as a nation were soon made more complex by the development of various industries and the growth of international trade and credit relations. These factors, among others, forced Peruvian lawmakers to realize that the new nation had outgrown the prevailing Spanish laws.

Spain itself had discarded the Ordenanzas de Bilbao, adopting in their place a new set of laws in 1829. Peru abolished the Tribunal del Consulado by a Decree of September 22, 1826,³ but later decided that this special court was

¹ *Ordenanzas de la ilustre universidad y Casa de Contratación de la M.N. y M.L. villa de Bilbao, aprobados y confirmados por el rey nuestro señor don Philipe Quinto año de 1737.* Bilbao. Vda. de A. de Zafra y Rueda. 1738. 308 p.

² *Ordenanzas del tribunal del consulado de esta ciudad de los reyes y reynos del Perú, tierra firme y Chile . . . Confirmados por el rey Don Felipe IV, nuestro señor, en treinta de marzo del año de mil y seiscientos y veinte y siete . . .* Lima, Casa de los Niños Huérfanos Expósitos, 1768. 66 p.

³ Moreyra Paz-Soldán, Manuel, ed. *Cuadernos de Juntas*. Lima, 1956-59. 2 v. (Documentos

still needed. By the Law of December 2, 1829, the court was restored with greater jurisdiction and additional regulations and instructions. The special commercial courts were not completely abolished until August 31, 1887, when jurisdiction over mercantile litigation was conferred upon the ordinary courts.

In 1853 the Spanish Commercial Code, as revised by the Consejo de Estado, was adopted by Peru under the Law of January 10, 1852, and President Echenique decreed it effective as of June 15, 1853.⁴ Exclusive printing and selling rights were granted to José Antonio García, Federico Villarán, and Tomás Urrutia.

Local application and interpretation of many provisions of the commercial code proved to be difficult or doubtful. Because it was decreed that the Ordenanzas de Bilbao be repealed only insofar as they conflicted with the new code in Peru, some provisions of the Ordenanzas continued to be observed.

In the ensuing years, the code was amended copiously to include rules concerning exchange brokers, banks, savings and commercial institutions, chambers of commerce, patents, trademarks, auctions, collateral security, insurance companies, and communications. Before the end of the 19th century, the code had become practically obsolete.

On February 28, 1898, a three-man committee was appointed to study the new Spanish Commercial Code of 1885 for possible adaptation to Peruvian law and practice. The members designated were Luis Felipe Villarán and Felipe de Osma y Pardo, both jurists, and José Payán, an economist. Finding mere adaptation of the Spanish code not enough, the committee incorporated some modern principles found in the new Argentine and Italian commercial codes as well.

The committee's draft was presented to the Congress in 1898, but it was not deliberated upon until the following year during an extraordinary session. Finally, in 1901 the draft was approved, and on February 15, 1902, it was promulgated, becoming effective on July 1 of that year.⁵ The code, as adopted, amended the original Spanish text on such matters as bankruptcy procedure, issuance of bank notes, stock companies (*sociedades anónimas*), and rights of emancipated minors to engage in acts of commerce. Matters not covered in the code were made subject to such special laws as those enacted concerning ship mortgages and cooperative associations.

Since the code's promulgation, revisory commissions were appointed pe-

para la historia económica del Virreinato Peruano) [Title page: *El Tribunal del Consulado de Lima, Cuaderno de Juntas*, v. 1 contains 1706-1720; v. 2, 1721-1727]

⁴ *Código de Comercio de la República del Perú*. Lima, Impr. del Gobierno por E. Aranda, 1853. 245 p.; another ed. 1875. 231 p.

riodically to recommend revisions, but for various reasons, none was successful in pursuing such a task. By Law 6606 of March 16, 1929, President Leguía was authorized to create a revisory commission, but it was not until several years later that the commission was funded and its members appointed.

Nominees to this commission included Dr. Osvaldo Aguirre Morales of the Senate, Florencio Portocarrero Olave from the Chamber of Deputies, Dr. Jesús García Maldonado representing the Supreme Court, Dr. Juan Bautista de Lavalley of the Facultad de Derecho of San Marcos University, and Dr. Ernesto de la Jara y Ureta from Lima's Chamber of Commerce. The nominations were approved by Supreme Resolution of March 31, 1942, and the nominees finally installed on April 10, 1942, as members of the Revisory Commission of the Commercial Code, under the chairmanship of the minister of justice, Dr. Lino Cornejo. Later Dr. José Frisancho replaced Dr. García Maldonado when, in October 1942, the latter retired from the Supreme Court, and still later, Dr. Luis Alayza y Paz Soldán replaced Dr. de Lavalley.

The proceedings of the commission, from its first session on April 16, 1942, to its 72d session on January 11, 1945,⁶ included deliberations on the preliminary draft drawn up by Dr. Carlos García Gastañeta, member of a 1937 revisory commission, and the debates on the proposed code's first book. As far as it can be ascertained, the commission's efforts never advanced beyond the deliberative stages. Today the 1902 Code, although periodically amended, is still in force.

Among the latest amendments to the code are Law 16123 (*infra*) and Law 16587 of June 15, 1967,⁷ promulgating the Law on Negotiable Instruments and Securities and its regulation, and repealing sections 10, 11, and 12 of the code's second book. This negotiable instruments law took effect on March 31, 1968.⁸ Decree-Law 18353 of August 4, 1970,⁹ regulating and enlarging the powers of the Comisión Nacional de Valores, repealed sections 5 and 6 of the first book of the code, as well as Supreme Decrees 93-68-FO of August 14, 1968, and 358-68-HC of August 16, 1968, on the subject. Decree-Law 18948 of September 7, 1971,¹⁰ amended sections 1 and 5, article 116, of the code concerning auctions and auctioneers.

⁵ *Código de Comercio del Perú. Ley de Quiebra. Reglamento del Registro Mercantil*. Ed. oficial. Lima. Impr. del Estado, 1902. 189, 21. 13 p.

⁶ *Actas de la Comisión Reformadora del Código de Comercio*. Lima. Libr. é Impr. Gil. S.A., 1945. 1 v.

⁷ *El Peruano*, June 22, 1967.

⁸ *El Peruano*, Jan. 9, 1968.

⁹ *El Peruano*, Aug. 5, 1970.

¹⁰ *El Peruano*, Sept. 8, 1971.

According to the code, merchants are those individuals who have the legal capacity to conduct a business (either commercial or industrial) in which they are habitually engaged. An act of commerce is understood to refer to any act defined in the code and others of a similar nature. Acts of commerce are governed by the commercial code provisions, or if applicable provisions are lacking, by commercial usage, or in its absence, by the rules of civil law.

In Peru, the commercial register consists of two books. One is the individual merchant registry, and the other, the commercial company registry. Registration of individual merchants is optional, but registration of commercial companies established pursuant to the provisions of the code or special laws is mandatory.

Literature

GENERAL

Under this heading, annotated texts of the commercial code, treatises on the code, and collections of mercantile legislation will be incorporated. Other materials will be subdivided according to their subject matter. Thus, there will be special sections on mercantile companies, banking and insurance, maritime commerce, bankruptcy, patents-trademarks-copyright, industrial and investment legislation, and commercial arbitration. Because of the close interrelation between the civil code and the commercial code, the topics will frequently overlap.

Dr. de la Lama's contributions in the mercantile field appear to be among the earliest. Available information indicates that before 1880 he had published a work entitled *Notas de Legislación Mercantil*, now apparently out of print. More than 10 years later, he annotated the Commercial Code of 1852.¹ After this code's repeal, he turned his attention to the superseding 1902 Code.² He also authored a comprehensive treatise which deals generally with mercantile law and specifically with maritime commerce, foreign exchange, and bankruptcy legislation. This treatise forms part of the series, *Commercial Laws of the World*,³ and may be found in English and Spanish in the American edition of the original German work, *Die Handelsgesetze des Erdballs*.

One of the best early treatises is a textbook on the 1852 Code by the late Dr. Alberto A. Elmore,⁴ who was a professor of commercial law at San Marcos

¹ Lama, Miguel Antonio de la, ed. *Código de Comercio del Perú, con citas, notas, concordancias hasta el 30 de diciembre de 1896*. Lima, Gil, 1897. 646 p.

² ———. *Código de Comercio de Ley Procesal de Quiebras y Suspensión de Pagos . . .* Lima, Gil, 1902-5. 2 v.

³ ———. *El derecho de comercio, de cambio, de quiebra y marítimo. Translated into English by Wyndham Anstis Bewes*. Boston, The Boston Book Co. [1907] (The commercial laws of the world, v. 5. Peru and Bolivia)

⁴ Elmore, Alberto Augusto. *Tratado de derecho comercial*. Lima, Impr. de F. Masías y Cía., 1888-99. 2 v.

University and chief justice of the Supreme Court. The book consists of two volumes: the first offers basic commercial laws and an exposition of civil code institutions—persons, property, and contracts—as they relate to commerce; the second deals with maritime law. On August 28, 1944, on the occasion of the centenary of the Chief Justice's birth, *La Revista del Foro*, the official organ of the Colegio de Abogados, featured an article reviewing his work. The article refers to Dr. Elmore's attempt to revise his original work to conform to the provisions of the 1902 Code, and it proposes to publish in a commemorative edition the manuscripts he left on his death in 1916. No such edition, however, appears to have been published.

An early compilation of commercial legislation by José Manuel Rodríguez⁵ relates principally to foreign trade and customs administration. A third edition includes the texts of commercial treatises between Peru and other American nations.

Dr. Samanamú's treatise on general commercial law concepts,⁶ adapted to the contents of the Peruvian code and laws, reflects a thorough coverage of commercial acts, contracts, insurance with special emphasis on marine risks, bankruptcy, and conflict of law rules. A series of appendixes contains the actual texts of the laws supplementing the code.

The "Trade Promotion Series" of the U.S. Department of Commerce includes a volume in English by Roger D. Moore and Joaquín Servera⁷ dealing with Peru's commercial practices and laws, with pertinent provisions from the Constitution and different codes included. In 1930, during his tenure as chief of the Latin American Legal Section of the Commercial Laws Division of the U.S. Department of Commerce, Moore read a paper⁸ before the American Foreign Law Association. His statements regarding the Commercial Code and supplementary laws are still considered valid and should therefore be of immense value to the American researcher.

Dr. Cornejo, who was a professor of commercial law along with his impres-

⁵ Rodríguez, José Manuel. *Reglamento de comercio y aduanas del Perú. con las leyes y disposiciones supremas vigentes que lo modifican*. Lima, Tip.-Lit. de P. Bacigualpi, 1891. 208 p.; 2.ed., autorizada y corr. 1896. 241 p.; 3.ed. 1901. 332 p.

⁶ Samanamú, Francisco. *Manual de derecho mercantil peruano*. Lima, Sanmartín Cía., 1919. 934 p.

⁷ Moore, Roger D., and Joaquín Servera. *Trading under the laws of Peru*. Washington, U.S. Govt. Print. Off., 1930. 136 p. (U.S. Bureau of Foreign and Domestic Commerce. Trade Promotion Series, no. 98)

⁸ American Foreign Law Association. *Proceedings . . . The Commercial Law of Peru. A paper read at the 1930 annual meeting of the American Foreign Law Association by Roger D. Moore*. [n.d., n.p.] 34 p.

sive credentials enumerated elsewhere in this guide, is credited with several contributions of textbooks, including three which consist of his class lectures.⁹ His other books relate to corporations and maritime commerce and are commented upon later in this chapter.

A brief elementary work by Dr. Luis Sobrevilla González,¹⁰ written for use in commercial law classes, provides clear and concise legal definitions for non-lawyers; legal forms used in connection with certain commercial acts are also provided. A similar work intended for consultation by businessmen and employees concerned with commercial matters was published by J. Ricardo Vázquez,¹¹ an accountant. It contains forms and illustrations, particularly of negotiable instruments and customs documents, and brief but important information on foreign monetary systems, commercial abbreviations, and technical terms.

Dr. Andrés León Montalbán's lectures in an introductory course at the Catholic University offer historical antecedents and show the development and adaptation of commercial law to Peruvian customs and practices as well as the existing laws in related fields.¹²

Law and doctoral theses published from 1873 to 1941¹³ are selected as potential sources of specific points or questions involving commercial law.

⁹ Cornejo, Lino. *Derecho comercial . . . (versión taquigráfica de las lecciones dictadas en la Facultad de Derecho y Ciencias Políticas de la Universidad Mayor de San Marcos en el año académico 1931-32)* Lima, 1935- 1 v.

———. *Derecho comercial. Segundo curso. Año académico de 1940.* [Lima? 1940?] 212 l.

———. *Programa de derecho comercial, segundo curso.* Lima [Tall. de Linotipía] 1944. 17 p.

¹⁰ Sobrevilla González, Luis. *Elementos de legislación comercial del Perú.* Lima, Impr. del Puericultorio Pérez Aranibar, 1937. 75 p.

¹¹ Vázquez, J. Ricardo. *Elementos de comercio y documentación mercantil.* Lima, Cía. de Impresiones y Publicidad, 1941. 107 [1] p.; ed. reformada. 1949. 107 p.

¹² León Montalbán, Andrés. *Derecho comercial (primer curso).* Lima, Ediciones Jubilares, 1943. 584 p. (Pontificia Univ. Católica del Perú) 2.ed. 1964. 472 p. [Title varies]

¹³ Deústua, Alejandro A. *Los defectos de la legislación mercantil.* Lima, 1873. [Thesis. Univ. de San Marcos]

Olaechea, Pedro Carlos. *Cuenta Corriente.* Lima, 1901. [Thesis]

Silva Santisteban, Emilio. *Evolución del derecho mercantil; su concepto en la ciencia moderna.* Lima, 1904. [Thesis. Univ. de San Marcos]

Caso, Pedro. *Compra-Venta Mercantil.* Lima, 1908. [Thesis]

Arias Schreiber, Diómedes. *Estudio sobre la letra comercial o de cambio.* Lima, 1910. [Thesis]

Delgado, Pedro Génaro. *El contrato por correspondencia en nuestro Código de Comercio.*

Caro, César A. *Actos mercantiles y comerciantes.* Lima, 1914. [Thesis. Univ. de San Marcos]

Solar, Emilio del. *El cheque como instrumento mercantil y las legislaciones positivas modernas.* Lima, 1917. [Thesis]

Arias Schreiber, Ernesto. *Estudio sobre el cheque.* Lima, 1919. [Thesis]

Jiménez del Rey, Eduardo. *Naturaleza de los actos de comercio.* Béjar, Est. Tip de Mariano Hernández, 1919. 86 p. [Thesis. Univ. Central]

A few modern works in English exist. The former Inter-American Development Commission, based in Washington, D.C., was established to prepare a series of digests of Latin American law. It published, with the assistance of the Peruvian Commission of Inter-American Development, Dr. Castañeda's reference work on industrial laws, the rights and obligations of aliens, both individual and corporate, insofar as commercial activities are concerned, and other aspects of commercial law.¹⁴ This publication was superseded by an updated version written by Alberto Ulloa y Sotomayor¹⁵ and published as part of a continuing series on Latin American law by the Pan American Union in Washington, D.C. A third edition by Hernando de Lavalle¹⁶ appeared in 1962.

Other important works in English include Richard M. Boesen's comparative study of Peruvian and U.S. laws involving contracts, sales, labor, with special stress on sale of personal or real property, partnerships, conditions of employment, domestic and foreign corporations, and forms of security under Peruvian laws. The work meets the author's objective of presenting to the North American the nature and scope of legal concepts involved in Peruvian business.¹⁷ Another English work is Price, Waterhouse and Company's information pamphlet for the American businessman doing business in Peru.¹⁸ This source deals mainly with foreign corporations and taxation. A looseleaf handbook on Peruvian

Pérez Liendo, Rosa. *Condición jurídica de la mujer en la rama del derecho comercial*. Lima, 1919. [Thesis. Univ. de San Marcos]

Vidalón Menéndez, Cesáreo. *Acto Comercial*. Lima, 1919. [Thesis. Univ. de San Marcos]

García y Aler, Constantino. *La unificación del derecho de la letra de cambio*. Lima, 1934. [Thesis]

Miró Quesada Laos, Enrique. *Las letras de cambio y las letras de impuesto fiscal*. Lima, 1937. [Thesis]

Diez Canseco, Jaime. *Títulos o efectos al portador y del robo, hurto o extravío de los mismos en el Código de Comercio*. Lima, 1940. [Thesis]

Jave Rodríguez, Miguel. *El contrato de compra-venta mercantil*. Lima, 1941. [Thesis]

Pflücker Olquín, Germán. *El contrato de cuenta corriente*. Lima, 1941. [Thesis]

Castañeda, Jorge Eugenio. *La letra de cambio ante los tribunales peruanos*. Lima, Cía. de Impresiones y Publicidad, 1943. 83 p.

———. *Del endoso cambiario y de la jurisprudencia peruana sobre derecho de cambio*. Lima [Cía. de Impresiones y Publicidad] 1943. 95 p. [Doctoral thesis]

¹⁴ ———. *A reference to the laws of Peru in matters affecting business in various aspects and activities*. Washington, 1947. 68 l.

¹⁵ Ulloa y Sotomayor, Alberto. *A statement of the laws in matters affecting business*. 2.ed., rev. and enlarged. Washington, Division of Law and Treaties, Dept. of International Law, Pan American Union, 1955. 133 p.

¹⁶ Lavalle, Hernando de. *A statement of the laws of Peru in matters affecting business*. 3.ed., rev. and enlarged. Washington. Pan American Union. General Secretariat. Organization of American States. 1962. 234 p.

¹⁷ Boesen, Richard M. *Rights and duties of foreign business under Peruvian law*. Lima, Andean Air Mail & Peruvian Times, 1953. 227 p.; [Rev. ed. 1966] 320 p.

¹⁸ Price, Waterhouse and Company. *Doing business in Peru*. [New York?] 1960. 58 p. (Information guide for those doing business outside the United States of America)

financial reporting practices was published in Peru by Arthur Andersen and Company,¹⁹ primarily for the guidance of its personnel.

In the 1950's Roberto Postigo Cáceres²⁰ compiled court reports of cases involving, among other subjects, banking, negotiable instruments, sales and other commercial transactions, trademarks and patents, bankruptcy, and insurance. The applicable law or provisions of law and the issues in a given case are presented, together with the court's final resolution. Within the same period, transcripts of commercial law lectures²¹ for second-year Peruvian law students were mimeographed for public distribution. Their source, however, is not indicated in the Library of Congress' copy.

Annotated texts of the 1902 Code, as amended from time to time, have been published between 1948 and 1967. Dr. Valega²² produced a two-volume work. Dr. Manuel García Calderón²³ published two editions based on Dr. de la Lama's 1905 work; the first came out in 1957 and the second, 10 years later, after the 1966 Law on Mercantile Companies became effective. J. V. Fajardo²⁴ incorporated all the changes made by Law 1175 in a text of the code he had published with pertinent notes, including copies of drafts for amending the code. Dr. José Merino Reyna²⁵ compiled the usual text, the law on bankruptcy, mercantile registers, civil aeronautics law and its regulation, warehouse law, and others which have the effect of amending the code.

The most recent work²⁶ located is that of Dr. Ulises Montoya Manfredi, a contemporary authority on Peruvian corporation law. His annotation of the code covers only the parte general (general part). Presumably, however, other volumes will follow covering the remainder of the code.

¹⁹ Andersen (Arthur) and Company. *Statements on accounting and auditing matters: Peru*. [Chicago?] 1969- 1 v.

²⁰ Postigo Cáceres, Roberto, ed. *Jurisprudencia mercantil: bancos, comisión, compra-venta mercantil, cuenta corriente, cheque, factura, letra de cambio, locación de servicios, marcas de fábrica, pagare y vale, quiebra, seguros, sociedades, tercería de pago y transporte*. [Arequipa, Tall. de la Edit. El Deber, 195-?] 610 p.; another ed. 1952. 346 [5] p.

———. *Jurisprudencia mercantil, contiene extractos sistematizados y anotados de la ejecutorias supremas*. Lima [Tip. Peruana, cover 1965] 2 v.

²¹ *Copias de derecho comercial. 2º curso*. Lima, 1957. 212 p.

²² Valega, José Manuel, ed. *Código de Comercio, Ley de Quiebra, legislación bancaria; concordados*. Lima, D. Miranda [1948] 2 v.; 2.ed. [195-] 306 p.

²³ García Calderón, Manuel, ed. *Código de Comercio; fuentes, exposición de motivos, concordancias y jurisprudencia de la Corte Suprema, con notas*. Lima, Mejía Baca, 1957. 454 p. (Códigos Peruanos Anotados) 2.ed., corr. y aum. 1967. 599 p.

²⁴ Fajardo, Jesús Víctor, ed. *Código de Comercio, con todas las modificaciones de la Ley no. 1175 . . .* [Lima] Edit. Mercurio [1964] 234 p.

²⁵ Merino Reyna, José, ed. *Código de Comercio*. [Lima] Ediciones Jurídicas, 1966. 1,028 p. (Leyes y códigos peruanos)

²⁶ Montoya Manfredi, Ulises. *Derecho comercial; parte general*. Lima, Univ. Nacional de San Marcos, Dirección Universitaria de Biblioteca y Publicaciones, 1972. 117 p.

Mercantile Companies

Within a few years after the promulgation of the 1852 Commercial Code, its provisions concerning the different types of business entities were considered inadequate for capital investment purposes. A commission was created in 1888 under the chairmanship of Dr. Elmore and charged with revising the entire code. This body instead produced only a draft law restricted to mercantile companies. The proposed law was presented by the revisory commission to the minister of justice who, in turn, referred it to the legislature with the commission chairman's illustrative report.¹ When finally approved, it was not adopted as a separate law but was incorporated into the second book of the 1902 Commercial Code. In the years following this amendment, several other drafts of amendments or laws on the subject were proposed.² In 1966, under Law 16123 of May 6, President Belaúnde Terry was authorized to promulgate as law the draft prepared by a revisory commission appointed under Law 6606 (*supra*) which the chief executive did by a supreme decree of the same date. Thus, a new Law on Mercantile Companies was incorporated into the code, becoming effective November 1, 1966.³ The law, as decreed, was revised slightly by a committee of two senators, two congressmen, and two experts from the Ministry of Justice.

In Peru's early days, the bulk of legal literature on business entities consisted of law and doctoral theses⁴ authored by students. A few long-established pro-

¹ *Proyecto de ley de sociedades y bancos, formulado por la Comisión reformadora del Código de Comercio*. Lima, Impr. del Estado, 1888. 86 p.

² *Constitución de sociedades anónimas; ampliación de las disposiciones del Código de Comercio. Proyecto y dictámen*. Lima, Tip. Nacional, 1922. 60 l. (Cámara de Senadores)

El proyecto de ley sobre sociedades en general presentado por J.L. Basombrío. Lima, Libr. é Impr. Gil, S.A., 1935. 56 p. (Cámara de Comercio de Lima)

³ *Nueva Ley de Sociedades Mercantiles*. [Lima] Ediciones Jurídicas, 1966. 188 p. (Leyes y códigos peruanos)

Corporación Nacional de Comerciantes. Departamento Legal. *Manual de sociedades mercantiles; compendio preparado por el Departamento Legal de CONACO*. Lima, 1966. 53 p.

⁴ Thöl, Juan. *El régimen legal de las compañías anónimas*. Lima, 1908. [Thesis]

———. *Estudio sobre las compañías anónimas*. Lima, Tip. Nacional, 1909. 200 p. [Doctoral thesis]

Arias Schreiber, Diómedes. *Reglamentación de las compañías anónimas mercantiles*. Lima, 1909. [Thesis]

Ramírez Barinaga, Manuel A. *Compañías cooperativas; su régimen legal*. Lima, Impr. La Equitativa, 1911. 195 p. [Thesis]

Arias Schreiber, Ernesto. *La personalidad jurídica de las compañías mercantiles*. Lima, 1918. [Thesis]

Boza Barducci, Carlos. *Estudio de las sociedades o compañías mercantiles. Colectiva. En comandita. Anónima*. Lima, 1930. [Thesis]

Calle, José Manuel. *Sociedades de responsabilidad limitada*. Lima, Libr. é Impr. Gil, 1930. 234 p. [Thesis]

fessionals, however, did address themselves to the subject. Dr. Alzamora Silva wrote a brief monograph for his courses on "special" commercial law.⁵ A textbook by Dr. Cornejo⁶ devotes the first section to mercantile companies, and an essay from the same pen treats of their administration.⁷

In the 1950's three more sources appeared. Hernando de Lavalles Vargas⁸ chose the subjects of bonds, the sociedad anónima, and its finances to write about, and Carlos Llontop Amorós⁹ published a brief paper involving the Peruvian corporation. Guido de Rossi Dasso,¹⁰ concentrating on the same topic, issued two editions of a study on the evolution, powers, and attributes of a sociedad anónima.

The Commercial Code, as amended to date, provides for business entities of various forms, generally classified as follows: (1) sociedad anónima, commonly noted as S.A., is an entity or stock company with attributes similar to those of a U.S. corporate body. It is the most commonly established form of business in Peru (note: any reference in this chapter to "corporations" is actually a reference to Peru's sociedades anónimas); (2) sociedad comercial de responsabilidad limitada, commonly designated S.R.L., is a body with a limited liability similar to the U.S. limited partnership concept; (3) sociedad civil de responsabilidad limitada, commonly abbreviated S.C.R.L., like the S.R.L., has a limited liability and is set up mostly for real property investment purposes; (4) sociedad en comandita por acciones, commonly abbreviated S.en C.por A., is a seldomly established type of business combining some partnership and

Sánchez Arauco, Julio R. *Sociedades Cooperativas*. Lima, 1932. [Thesis]

Guerrero Paredes, Augusto. *La organización administrativa de las sociedades anónimas*. Lima, 1936. [Thesis]

Rodríguez Orbegoso, Aurelio. *Las sociedades de responsabilidad limitada en las legislaciones más avanzadas del mundo y su conveniente introducción en nuestro Código de Comercio a reformarse*. Lima, 1934. [Thesis]

Merino Reyna, José. *La sociedad anónima en el Perú*. Lima, Empr. Edit. Peruana, S.A., 1937. 85 p. [Thesis]

Dávila Guevara, Humberto. *De las sociedades colectivas*. Lima, 1939. [Thesis]

⁵ Alzamora Silva, Lizardo. *Los aportes en las sociedades mercantiles*. Lima, Libr. é Impr. Gil, 1926. 42 p.

⁶ Cornejo, Lino. *Derecho comercial. Primera parte. Sociedades mercantiles*. Lima [Impr. Americana] 1935. 156 p.

⁷ ———. *La administración de las sociedades mercantiles. Del curso de derecho comercial dictado en la Facultad de Derecho de la Universidad Mayor de San Marcos*. Lima [19—] 27 p.

⁸ Lavalles Vargas, Hernando de. *La emisión de obligaciones por las sociedades anónimas*. [Lima] 1953. 138 p.

⁹ Llontop Amorós, Carlos. *Sociedades anónimas; régimen legal en el Perú*. Lima, 1954. 64 p.

¹⁰ Rossi Dasso, Guido de. *Genealogía y personalidad de la sociedad anónima*. Lima [Edit. Jurídica] 1962. 180 p.; 2.ed. 1965. 232 p. [Title varies]

corporate attributes; (5) sociedad colectiva, commonly designated S.C., is an entity similar to the S.en C.por A. except that its partners' holdings are not evidenced by share certificates, and all partners have unlimited liability for the firm's debts, much like a U.S. partnership; (6) sociedad civil, a civil entity similar to the S.C., is the type of business most commonly established after the sociedad anónima; and (7) sociedad en comandita simple, commonly noted as S.en C., is an entity similar to a limited partnership with general partners who are responsible for the firm's management and have unlimited liability for its obligations and limited partners who are liable only to the extent of their capital participation. In effect, there are two kinds of businesses or commercial companies in Peru: corporations and partnerships.

In 1961 Ulises Montoya Manfredi, another law professor at San Marcos University, contributed to the literature on corporations and corporation law.¹¹ After the adoption of the 1966 Law on Mercantile Companies, Dr. Montoya published what appears to be the most comprehensive and scholarly work to date on mercantile companies in general.¹² He probes the subject within the context of the modern climate of capital investment, regional markets, and industrialization which the new law was meant to generate. A work that is similar in content but not in treatment is that by Manuel Cisneros and Atilio Botto Lercari L. Theirs is a simple annotation of the 1966 Law.¹³

Dr. Lucrecia Maisch von Humboldt wrote a comparative study of Peruvian corporation law as it existed in the provisions of the Commercial Code as of 1965, with the legislation and practices in France, Spain, Italy, and Germany.¹⁴ The study shows several attempts by different bodies or individuals in 1906, 1914, 1928, 1956, and 1961 to amend or supplement the law. She includes the text of a proposed general law on corporations by Congressman Jaime Rey de Castro consisting of 271 articles in 19 sections dealing with the organization, operation, mergers, stocks, dissolution, and liquidation of corporations.

Shortly after the promulgation of the 1966 Law on Mercantile Companies, Dr. Maisch von Humboldt wrote on both corporations and partnerships, i.e., the sociedad anónima and the sociedad comercial de responsabilidad limitada,

¹¹ Montoya Manfredi, Ulises. *Sociedades Anónimas*. Lima. 1961. 375 p.

¹² ———. *Comentarios a la Ley de Sociedades Mercantiles*. Lima [Impr. de la Univ. Nacional Mayor de San Marcos. 1967] 640 p.

¹³ Cisneros, Manuel, and Atilio Botto Lercari L., eds. *Ley de Sociedades Mercantiles, vigente desde el 1° de noviembre de 1966. Concordancias y anotaciones, apéndices: tributario y laboral*. Lima. 1967. 253 p.

¹⁴ Maisch von Humboldt, Lucrecia. *La sociedad anónima en el Perú y en Francia, Italia y Alemania. Ley del año 1965*. [Lima] Ediciones Jurídicas. 1966. 176 [2] p.

respectively, under the regime of the prevailing legislation.¹⁵ In 1970 she contributed another study which, although not directly related to Peru, is nonetheless significant because it expounds upon the principles and practices of partnerships as they exist in both Europe and Latin America and their relevance to Peru. The author touches upon, among other matters, the studies and deliberative functions of inter-American private legal conferences and the draft of a proposed law on private commercial companies for the entire Latin American region.¹⁶

Banking and Insurance

Banks and insurance companies are both mercantile companies which are organized as corporations (*sociedades anónimas*) subject to the control and supervision of the Superintendency of Banks,¹ a government agency later renamed the Superintendency of Banks and Insurance.

Banking used to be governed by the provisions of the commercial code. However, on May 23, 1931, a separate law was enacted as the general banking legislation. Although extensively amended to date, it has remained the basic law in this field.

The 1931 Banking Law, i.e., Decree-Law 7159,² the creation of the Central Reserve Bank³ (*infra*), and a bank and insurance supervising agency resulted from the recommendations made by the Commission of Financial Advisers, headed by Edwin Walter Kemmerer, which studied Peruvian economic and financial systems. This U.S. advisory group was invited by Peru and other Latin American governments to carry out economic studies (see financial legislation in chapter on administrative law).

The Central Reserve Bank of Peru (*Banco Central de Reserva del Perú*), created under Decree-Law 7137 of April 18, 1931, to regulate the volume of

¹⁵ Maisch von Humboldt, Lucrecia, and Cecilia Simas de Souza, eds. *La sociedad anónima y la sociedad comercial de responsabilidad limitada en la Ley de 1966; manual, estatutos, texto sumillado de la Ley*. Lima. Edit. Universitaria [1967?] 222 p.

¹⁶ Maisch von Humboldt, Lucrecia. *Empresa individual de responsabilidad limitada; proyecto de ley tipo para América Latina*. Lima, Univ. Nacional Mayor de San Marcos, 1970. 205 p.

¹ *Decreto ley no. 7041, Superintendencia de Bancos*. Ed. oficial. Lima, Imp. Casa Nacional de Moneda, 1931. 30 p. (Ministerio de Hacienda)

² *Ley de Bancos. Decreto-ley no. 7159*. Lima, Libr. é Impr. Guía Lascano [1931] 48 p. (Superintendencia de Bancos)

Ley de Bancos. (Decreto-ley de 23 de mayo de 1931), y exposición de motivos de la misión de consejeros financieros presidida por el doctor Kemmerer . . . Lima, Gil, S.A., 1931. 187 p.

³ *Banco Central de Reserva del Perú. Project of law for the creation of the Central Reserve Bank of Peru, together with a report in support thereof*. Lima [Princeton, N.J., Printed at the Princeton University Press] 1931. 105 p.

bank credit and to administer the international reserves of the country, has the exclusive privilege of issuing currency. This bank suffered many changes under different amendatory laws⁴ which were eventually incorporated into a single body of laws to serve as the bank's charter.⁵ In accordance with this charter, the bank was to operate for 30 years from September 1, 1931. Except for Law 13958 of January 30, 1962, which extended its life for 20 years, it would have ceased operating. The bank is an autonomous institution which represents the government of Peru in negotiations with the International Monetary Fund and similar institutions and in dealings with other central banks.⁶

In addition to regular, private commercial banks, Peru has a number of specialized financial institutions, such as those banks established primarily to finance industrial, mining, and fishing enterprises. Under Decree-Law 7273, an agricultural bank called Banco Agrícola del Perú was set up to extend loans to farmers and cattlemen.⁷ This bank was later absorbed by the Agricultural and Livestock Development Bank (Banco de Fomento Agropecuario del Perú) pursuant to Law 11691 of January 3, 1952.⁸ In accordance with Law 6126 of 1929, a Central Mortgage Bank (Banco Central Hipotecario del Perú) was created and charged with granting loans guaranteed by first mortgages on rural or urban real property.⁹ All these banks operate by their own charters but are also regulated by the general banking legislation in those areas not covered in their respective charters.

In the field of foreign exchange, the advent of World War II necessitated the imposition of exchange controls¹⁰ which remained on the statute books until

⁴ *Decretos-leyes y leyes posteriores al Decreto-ley no. 7137 de creación del Banco Central de Reserva del Perú*. Lima, Impr. Torres Aguirre, 1932. 42 p.

⁵ Banco Central de Reserva del Perú. *Banco Central de Reserva del Perú. Ley orgánica*. Lima, Impr. "El Universal," 1942. 44 p.

⁶ Banco Central de Reserva del Perú. *Perú, convenios de crédito recíproco; celebrados por el Banco Central de Reserva con sus similares de otros países miembros de la Asociación Latinoamericana de Libre Comercio*. 1967. 96 p.

⁷ Banco de Fomento Agropecuario del Perú. *Estatutos del Banco Agrícola del Perú*. Lima [Tall. de Linotipia] 1944. 108 p.

———. ———. 1948. 83 p.

Legislación. [Ley orgánica del Banco Agrícola del Perú; Ley no. 9576, de marzo 11 de 1942] Lima, Banco Agrícola del Perú, 1948. 46 p.

⁸ *Anuario de la legislación peruana*, v. 43. Lima, 1951. p. 76-78.

⁹ Banco Central Hipotecario del Perú. *Legislación y Tablas*. Lima [Empresa Edit. "Excelsior"] 1930. 116 p.

———. ———. Lima [Empresa Edit. "Excelsior"] 1932. 139 [5] p.

———. ———. Lima [Impr. Torres Aguirre] 1938. 115 [1] p.

———. ———. Lima, 1944. 154 p.

———. *Legislación, tablas y reglamento*. Lima, 1952. 386 p.

¹⁰ *Control de Cambios*. Lima. Banco Central de Reserva del Perú. 1947. 105 p.

Establishment of a commission to qualify applications for official foreign exchange. Translation. Supreme Decree of Jan. 17, 1949. 3 p.

1948 when, under Decree-Law 10905 of December of that year, such controls were somewhat eased. Eventually, the official exchange rate was suspended under Decree-Law 11208 abolishing in effect the exchange controls. Export controls on essential products and import restrictions¹¹ on certain items, or the requirement of quotas or licenses have been resorted to by the Peruvian government on occasion to help stabilize the country's economy. At one time, the government even experimented with price controls.¹²

Under the present regime, import controls,¹³ as well as exchange controls, have been reimposed with the avowed purpose of attaining and/or maintaining a favorable balance of payments position. The basic controlling decree-law is No. 18275 of May 15, 1970,¹⁴ as amended or supplemented by the following:

(1) Decree-Law 18737 of January 19, 1971,¹⁵ which clarifies existing exchange market rules; (2) Supreme Decree 4-71-EF of January 19, 1971,¹⁶ approving the regulation on the operation of the foreign exchange market and repealing the former regulation under Supreme Decree 72-70-EF of May 15, 1970; and (3) Supreme Decree 162-71-EF of November 23, 1971,¹⁷ amending several articles of the regulation for the operation of the exchange market approved under the previously cited decree concerning the authorization for the sale of foreign exchange. The main thrust of current decrees is the prevention of exchange speculation practices and the flight of foreign exchange through direct government participation, conducted through the state banks, in exchange transactions.

Invariably foreign exchange may involve negotiable instruments. The parties against whom a bill of exchange may be drawn, the transfer of the ownership

Control de Cambios. Lima, Impr. Casa Nacional de Moneda. 1949-50. 2 v. [v. 1: Castañeda, Jorge Eugenio, ed.]

¹¹ Decree of Nov. 6, 1945, reorganizing the control of imports, exports and foreign exchange [English translation by A. W. Kimber, Washington, D.C.] 2 p.

List of articles of merchandise authorized for import in Peru with no requirement of import license or permit as per Supreme resolution dated Dec. 3, 1948 and the list published in *El Peruano* of Dec. 9, 1946, and additions or amendments up to Apr. 20, 1949. 83 p.

Additions and exclusions to the list as per Supreme resolution dated May 28, 1949. (*El Peruano* of June 4, 1948) 4 p.

¹² *Leyes, decretos supremos, resoluciones supremas y ministeriales y disposiciones relativas al control de precios de productos medicinales y artículos de tocador*. Lima, 1942. 48 p. [v. 1, no. 1, julio de 1942]

¹³ Rodrigo Mazuré, Luis Carlos, ed. *Importaciones Prohibidas*. [Lima. Asesores Financieros, División de Publicaciones, 1972 ?] 374 p. (Informativo Legal Rodrigo. Manual extraordinario, no. 5)

¹⁴ *El Peruano*, May 16, 1970.

¹⁵ *El Peruano*, Jan. 20, 1971.

¹⁶ *El Peruano*, Jan. 21, 1971.

¹⁷ *El Peruano*, Nov. 26, 1971.

as well as all rights thereto by endorsement, acceptance, and accommodation (aval) under Peruvian law are some of the matters treated in a monograph by José Ibáñez Velarde.¹⁸ In a 1951 study Félix Navarro Irvine probes the same subject, albeit from a standpoint of a multinational practice;¹⁹ the author has long been an advocate of a uniform negotiable instruments law for the entire Western Hemisphere. In 1967, shortly after the promulgation of the new law on negotiable instruments mentioned earlier in this chapter, Dr. Castañeda analyzed its provisions in an annotated work.²⁰

An early sketch of the development of banks and banking legislation in Peru is provided in a monograph by Germán de la Fuente Chávez;²¹ various amendments to the basic banking legislation adopted over the years are reflected in two publications of 1940²² and 1963.²³ Amendments in recent years have been published in Peru's official gazette. Among the more important ones are: Law 16000 of January 27, 1966,²⁴ creating the National or State Bank; Supreme Decree 297-68-HC of August 14, 1968,²⁵ providing a new text for chapters 1 and 2 of the Banking Law (Decree-Law 7159, *supra*), concerning the creation and organization of banks, insurance, and finance companies; Decree-Law 18740 of January 19, 1971,²⁶ stipulating that the state's development banks shall not require any private commercial bank's guarantee for development loans; Decree-Law 18779 of February 4, 1971,²⁷ establishing the minimum cash reserves of credit institutions; and Decree-Law 19043 of November 25, 1971,²⁸ requiring that capital stock of commercial banks be wholly owned by Peruvians.

American newspaper reports in recent years indicate that a special commission was created and charged with preparing a draft of a new banking law and

¹⁸ Ibáñez Velarde, José. *La letra de cambio en el derecho peruano; legislación, concordancias, comentarios, jurisprudencia*. [Lima ?] 1959.

¹⁹ Navarro Irvine, Félix. *Comentario al proyecto de ley uniforme sobre letra de cambio*. Lima, Edit. Lumen, 1951. 106 p.

²⁰ Castañeda, Jorge Eugenio. *Introducción a la nueva Ley de Títulos-Valores (no. 16587) con el texto de dicha ley anotada y concordada*. Lima, Cámara de Comercio de Lima, 1967. 112 p.

²¹ Fuente Chávez, Germán de la. *Bosquejo de la evolución bancaria en el Perú*. Lima, Edit. Huáscar, 1937. 96 p.

²² *Modificaciones a la Ley de Bancos posteriores a la ley 8050*. Lima, Libr. é Impr. Gil, S.A., 1940. 8 p.

²³ Fajardo, Jesús Víctor, ed. *Legislación bancaria; sus últimas modificaciones y concordados*. Lima, Edit. Mercurio [1963?] 152 p.

²⁴ *El Peruano*, Jan. 28, 1966.

²⁵ *El Peruano*, Aug. 15, 1968.

²⁶ *El Peruano*, Jan. 20, 1971.

²⁷ *El Peruano*, Feb. 5, 1971.

²⁸ *El Peruano*, Nov. 26, 1971.

later instructed to draft instead a comprehensive general law on credit institutions. A draft has been allegedly submitted to the government for its study and eventual adoption. However, so far as it can be determined from sources currently available, no such law has been adopted to date.

Insurance falls within the purview of articles 375 and 429 of the code. Types of insurance covered in the code include fire, life, and land transportation insurance; a general provision, article 429, provides that a commercial insurance contract may cover any other kind of risks arising from acts of God or fortuitous events. A compilation of insurance legislation, which was in force as of 1937, was issued that year.²⁹

It was under Law 8793 of December 15, 1938,³⁰ ratifying previous decrees, that the control of insurance companies and the enforcement of laws relative thereto, were entrusted to the Superintendency of Banks. Law 9796 of January 27, 1943,³¹ and its regulation under Supreme Decree of June 9, 1943,³² deal with the steps and requirements for organizing and operating insurance companies, both domestic and foreign. The late Henry P. Crawford, formerly a staff member of the U.S. Department of Commerce and a scholar on Latin American affairs, treats of these matters, including reinsurance, rates, risks, and other aspects of insurance, in a 1943 article published in Washington, D.C.,³³ as do a number of university students in selected theses.³⁴

Today, under Supreme Decree 367-68-HC of August 16, 1968,³⁵ branches of foreign insurance companies authorized to operate in Peru which have been in operation for more than 30 years are made subject to the requirements and conditions found in the new provisions introduced by Supreme Decree 297-68-HC to the basic banking law (Decree-Law 7159, *supra*). Furthermore, Decree-Law 18425 of October 6, 1970,³⁶ requires that all reinsurance transactions abroad or from abroad should be conducted through the National Bank.

²⁹ *Legislación peruana de seguros*. Lima [Impr. Torres Aguirre] 1937. 113 p.

³⁰ *El Peruano*, Jan. 19, 1939.

³¹ *El Peruano*, Apr. 21, 1943.

³² *El Peruano*, June 29, 1943.

³³ Crawford, Henry P. "Peru's new insurance law and organization procedure." In *Foreign Commerce Weekly* (Washington, D.C.) Aug. 21, 1943.

³⁴ Cáceres, José Domingo. *Seguros sobre la vida*. Lima, 1916. [Thesis]

Rivera Schreiber, Ricardo. *El contrato de seguro sobre la vida*. Lima, 1916. [Thesis]

Borda Ferreiros, Carlos. *El contrato de seguro*. Lima, 1936. [Thesis]

Alcalde Mongrut, Ricardo. *Seguros*. Lima, 1941. [Thesis]

³⁵ *El Peruano*, Aug. 21, 1968.

³⁶ *El Peruano*, Oct. 7, 1970.

Maritime Commerce

The third book of the Commercial Code of Peru covers the subject of maritime commerce. In addition to the code, Law 2411 of December 30, 1916, on ship or maritime mortgages¹ and Law 4380 of October 29, 1921, known as the Code of Customs Procedure,² regulate this commercial area.

As pointed out previously in the chapter on civil law, vessels are considered real property. Title to a vessel may be acquired or transferred in writing which would not be binding on third parties unless recorded in the Commercial Register. A vessel's owner and the shipping agent (*naviero*) are liable for the acts of the captain and for the obligations contracted by him for the general maintenance of the vessel.

Acts of maritime commerce dealt with in the code include: a charter party, the contract of shipping which, in addition to other stipulations agreed to by the contracting parties, must contain data specified in the code; bottomry, a contract by which a vessel or its cargo is hypothecated as security for a loan the repayment of which is made subject to the safe arrival in port of the ship or its cargo, as the case may be; and maritime insurance, which must be in writing, signed by the contracting parties, and contain information required by the code. Losses or risks and accidents in maritime commerce such as averages, which are those expenses necessary to preserve the vessel, collision, shipwreck, and the resulting liabilities on the parties involved are likewise dealt with in the code.

José Toribio Flórez, a former judge of the Superior Court of Lima, demonstrated great interest in naval law, merchant marine regulations, legislation on port authorities and policing of waters, while he held the positions of port captain and fiscal agent in Callao. During his service as port captain in the 1860's, he compiled legislation on merchant ships and harbors covering the period from independence to 1862.³ Believing that there was urgent need for harmonization or orderly compilation of laws on these matters, Dr. Flórez compiled all existing laws into what he called a Merchant Marine Code.⁴ This code was presented to the government which approved the work on March 13,

¹ Ley no. 2411. In *Anuario de la legislación peruana* 1916 Ed. oficial. p. 122-129.

² *Código de procedimientos aduaneros del Perú*. Ed. oficial. Lima. Libr. é Impr. E. Moreno. 1926. 204 p.

³ Flórez, José Toribio. *Compilación de las leyes expedidas desde el año de 1821 en la relativo al servicio de las capitanías de los puertos y las matriculas* . . . Callao. Impr. de M. Gómez y J. Aparicio. 1862. 192 p.

⁴ ———. *Código de la Marina Mercante ; reglamento de capitanías de los puertos de la República*. Lima. Impr. La Industria. 1900. 196 p.

1900, decreeing it to be printed and declaring it as official. Effective as of July 28, 1900, it became the official code on merchant ships and harbors until 1922 when it was repealed by a new regulation⁵ promulgated November 13 of that year. This regulation was later superseded by another regulation adopted in 1940⁶ which, in turn, was superseded by a third regulation promulgated October 31, 1951, and becoming effective January 1, 1952.⁷

A textbook by Dr. Antenor Arias⁸ is one of the earliest items in this branch of commercial law. The book consists of lectures delivered at San Marcos University, covering both comparative and international law. U.S. legal institutions are frequently cited. The work includes more than commercial law topics for it devotes some chapters to political asylum, the effects of peace treaties on maritime warfare, blockades, contraband capture and prizes, use of flags, and international jurisdiction.

Another textbook, by Dr. Cornejo,⁹ also consists of lectures given at the same university, but they are presented in summarized form and adapted specifically to domestic law and practice. A second volume intended to cover the topics of contracts for passage, bottomries, maritime mortgage and insurance, and averages never materialized. The present volume treats of general concepts of maritime commerce, the nationality and registration of vessels, their officers and crew, and ownership and other rights over them.

An excellent monograph on maritime mortgages appeared in 1937 as part of a series published by the Library of the "Revista de Economía y Finanzas." Its author, Dr. Agustín Molina Bueno, successfully employs the comparative law technique in presenting Peruvian practices on the subject.¹⁰

León Garaycochea contributed a complete and orderly collection of naval legislation which includes regulation of trade and commercial aspects thereof.¹¹ Authorized by the Ministry of the Navy, the compilation includes legislative

⁵ *Reglamento de capitanías y de la Marina Mercante nacional*. Ed. oficial. Lima, Impr. Torres Aguirre, 1922. 345 p.

⁶ ———. [Callao] Tall. Tip. de la Escuela Naval del Perú, 1940. 2 v.

⁷ ———. Lima, Impr. Torres Aguirre, 1951. 2 v. (Ministerio de Marina. Ordenanzas navales, pt. 1)

⁸ Arias, Antenor. *Lecciones de derecho marítimo*. Lima, Impr. del Estado, 1876. 459 p.

⁹ Cornejo, Lino. *Derecho Marítimo Comercial*. Lima, Gil, S.A. [1943-(50)] v. 1-2.

¹⁰ Molina Bueno, Agustín. *Hipoteca naval. Las transacciones marítimas y el crédito*. Lima, P. Barrantes Castro, 1937. 39 p. (Biblioteca de la "Revista de Economía y Finanzas." 1.ser. Cuadernos monográficos útiles, no. 1)

¹¹ Garaycochea, León, ed. *Legislación naval y de aviación; recopilación de las leyes, resoluciones legislativas, reglamentos, decretos, resoluciones supremas y ministeriales, órdenes generales circulares, etc. correspondientes a los dos ramos; y leyes, reglamentos y decretos de carácter general . . .* Ed. autorizada. Lima, Impr. Segrestán, 1919-46. 18 v. [v. 1-4 and v. 16-18 have title: *Legislación naval; recopilación de las leyes . . .*]

and administrative enactments, resolutions, and documents of all kinds. Consisting of 18 volumes, the collection covers the period from 1919 to 1946.

The majority of the law theses presented to San Marcos University on maritime commerce relate to maritime mortgage. A few relevant theses are cited in a footnote.¹²

Bankruptcy

Bankruptcy is a legal status declared by a court; insolvency is a de facto status of an individual whose liabilities are greater than his assets. One status need not necessarily include the other.

The purpose of a bankruptcy action is to settle in one proceeding, in the manner provided by law, the payment to all creditors of a bankrupt's debts; its may be initiated by the debtor himself, any of his creditors, or the government in a case where the debtor has absconded.

The fourth and last book of the Commercial Code deals with the substantive aspects of bankruptcy, and articles 765 to 934 of the Code of Civil Procedure deal with the procedural steps to be taken in bankruptcy cases. Provisions in the first section of the Commercial Code, dealing with procedural matters, have been repealed by Decree-Law 7439 of November 13, 1931, which, in turn, was repealed by Law 7566 of August 2, 1932, otherwise called *Ley Procesal de Quiebras*.¹ The 1932 law was based on the Chilean law of 1931.

Following the promulgation of the 1932 Bankruptcy Law, Dr. Aparicio y Gómez Sánchez issued one of his excellent correlated texts,² which provides

¹² Rodríguez y Rodríguez, Abel. *La hipoteca naval en el Perú*. Lima, 1916. [Thesis]

Rodríguez y Montoya, José Manuel. *Necesidad de uniformar la legislación comercial relativa a "averías gruesas o comunes."* Lima, 1916. [Thesis. Later published as *Necesidad de uniformar la legislación universal de comercio sobre averías gruesas y las reglas de York y Amberes* . . . Lima, Lit. y Tip. T. Scheuch, 1916. 38 p.]

———. *Crítica de las disposiciones del Código de Comercio del Perú sobre averías*. Lima, Lit. y Tip. T. Scheuch, 1918. [Doctoral thesis]

Fariña y Casanueva, Salvador. *De la hipoteca de las naves en la legislación peruana*. Lima, 1927. [Thesis]

Carranza, Manuel Augusto. *La hipoteca naval en el derecho mercantil peruano. Modificaciones que deben introducirse*. Lima, 1929. [Thesis]

Miller, J. L. *Cuestiones Mercantil-Marítimas*. Lima, 1929. [Thesis]

Guillén Laos, Víctor A. *El contrato de fletamento en nuestra legislación mercantil*. Lima, 1934. [Thesis]

Tolmos Alfaro, Arturo. *El contrato de pasaje marítimo*. Lima, 1938. [Thesis]

¹ *Novísima Ley Procesal de Quiebras* no. 7566. *Publicación autorizada por el supremo gobierno y con valor oficial*. [Lima] Tall. Gráf. de la Penitenciaría [1932] 65 p.

² Aparicio y Gómez Sánchez, Germán. *Ley Procesal de Quiebras. Concordancias*. Lima, 1932. 247 [1] p.

antecedent legislation, cross-references, case law, and historical analysis for the individual provisions of the law and includes indexes for easy consultation. The various international treaties, e.g., Montevideo (1889 and 1940) and Havana (1928), the text of the Chilean law in this field, and related banking and other legislation are contained in appendixes to the book.

A two-volume work published in Chile by Alberto Durán Bernales³ compares in great detail the Peruvian bankruptcy law with that of Chile, which is its model, and offers judicial interpretation of law and practice from the standpoint of Chilean and Peruvian courts; the importance of this publication cannot be underestimated.

A monograph from the pen of Jorge Arce Mas⁴ appeared in 1938. It analyzes the defects of the 1932 Law on Bankruptcy Procedure concerning, among other aspects, the time expended and the need in some cases to prevent bankruptcy; recommendations and suggested amendments to the law made by the author and the Supreme Court appear at the end of the work.

A university textbook written by Dr. Sánchez Palacios for use in his course is another significant and useful source of foreign and domestic legal data and general information on bankruptcy.⁵

In 1965 a special commission was created under Supreme Decree 134-AL of March 25 of that year⁶ and charged with preparing a preliminary draft of a new procedural banking law. Whether or not such a draft was ever readied is not yet known; in any event, the Ley Procesal de Quiebras under Law 7566 (supra) has remained as the law, although amended occasionally, that is still in force today. Law 16267 of October 21, 1966,⁷ for instance, amended several of its provisions, as did Decree-Law 17801 of September 2, 1969, which amended articles 8 and 60 regarding bankruptcy hearings that involve agrarian matters.

Patents, Trademarks, and Copyright

Article 29 of the Peruvian Constitution in force provides that "Property is inviolable, whether it be material, intellectual, literary or artistic. No one may

³ Durán Bernales, Alberto. *Explicaciones y jurisprudencia de la Ley de Quiebras del Chile, correlacionada con la Ley Procesal de Quiebras del Perú*. Santiago de Chile, Tall. Gráf. Gutenberg, 1935. 2 v.

⁴ Arce Mas, Jorge. *Quiebras*. Lima [Edit. Lumen, S.A.] 1938. 126 p.

⁵ Sánchez Palacios, Manuel. *Ley Procesal de Quiebras (curso universitario)* Lima, Libr. é Impr. Gil, S.A., 1939. 204 p.

⁶ *El Peruano*, Mar. 31, 1965.

⁷ *El Peruano*, Nov. 5, 1966.

⁸ *El Peruano*, Sept. 3, 1969.

be deprived of it except for reason of public utility legally proven and only after previous and just compensation . . .”¹ Article 30 stipulates that “The State guarantees and protects the rights of authors and inventors” and that special laws should regulate the exercise of those rights.

These dicta have always been a distinguishing hallmark of Peru’s sovereign existence. As early as the 1800’s Peru has had special laws implementing the above constitutional provisions. The laws adopted on January 28, 1869, and January 3, 1896, regulated the issuance of patents; other laws, adopted November 3, 1849, and December 19, 1892, governed copyrights and trademarks, respectively. The 1849 law, called the Law of Intellectual Property, is believed to be one of the earliest enacted in Latin America.

The original texts of the laws in these fields appear in several compilations issued between 1878 and 1920.² The texts, in abstract form, may also be consulted in English in a U.S. Department of Commerce publication³ and also in a compilation of Latin American legislation on industrial property published by the International Bureau of American Republics, now the Pan American Union.⁴ James R. Brown of the Patent and Trademark Section of the Division of Commercial Laws of the U.S. Department of Commerce at the time contributed the relevant chapter in the previously cited department publication.

In 1938 Ramón Silva S.⁵ and in 1945 E. Clinton Evans Gallagher⁶ contributed their own updated collections in Spanish and English, respectively; the former contains a list of registered marks from 1929, and the latter adds other material relative to drugs and pharmaceutical specialities.

¹ *Constitución de la República del Perú* . . . 21.ed. Lima. Impr. Guia Lascano, 1970. p. 9.

² Ydiáquez, José Román de, *comp. Legislación peruana relativa a concesiones de patentes de privilegio*. Lima, Impr. de J. Francisco Solís, 1878. 51 p.

Laos, Ricardo, *comp. Leyes y resoluciones sobre registro de marcas de fábrica y privilegios industriales*. Ed. oficial. Lima, Impr. de la Industria, 1900. 35 p.; another ed. 1903. 38 p. [Printer varies]

Leyes y reglamentos de marcas de fábrica y patentes de invención . . . Lima, Ofic. La Opinión Nacional, 1909. 105 p.; another ed. 1920. 119 p. (Ministerio de Fomento. Dirección de Fomento) [Printer varies]

³ Moore, Roger D., and Joaquín Servera. *Trading under the laws of Peru*. Washington, D.C., U.S. Govt. Print. Off., 1930. 136 p. (U.S. Bureau of Foreign and Domestic Commerce, Trade and Promotion Series, no. 98)

⁴ International Bureau of American Republics. *Patent and trade-mark laws of the Spanish American Republics* . . . Washington, D.C., U.S. Govt. Print. Off., 1904. p. 53-62. (H. Doc. 145, 58th Cong., 3d. sess.)

⁵ Silva S., Ramón, *comp. Legislación industrial (marcas y patentes)* Lima, Impr. Torres Aguirre, 1938. 269 [1] p.

⁶ *Peruvian legislation. Concerning trade-marks and patents and the import of drugs and pharmaceutical specialities*. Translated by E. Clinton Evans Gallagher. Lima [Impr. Americana] 1945. 143 p.

The former legislation governing issuance of patents, registration of trademarks, and other categories of industrial property was Law 13270 of November 30, 1959⁷ (the Industrial Promotion Law). The regulation of this law was provided for under Supreme Decree 4 of April 26, 1960, as amended by Supreme Decree 42-F of May 25, 1966.⁸

The current legislation is Supreme Decree 001-71-IC/DS of January 25, 1971,⁹ which is actually the Regulation to the General Law on Industries (see following section on industrial and investment legislation). Falling within the scope of this regulation are patents, industrial designs and models, trademarks, commercial names, industrial techniques or technological know-how, as well as unfair competition practices.

The present law on copyright is Law 13714 of September 1, 1961,¹⁰ which abrogates the former Law of Intellectual Property of 1849 (*supra*), and all other contrary laws, decrees, regulations, and resolutions. Pursuant to Supreme Resolution 000029 of February 12, 1962, a committee of experts prepared the regulation to the law which was eventually adopted and incorporated under Supreme Decree 61 of October 8, 1962.¹¹

The law created the National Copyright Register under the aegis of the Director of the National Library, an administrative setup quite similar to that in the United States where copyrights are obtained in the Copyright Office of the Library of Congress. The law, furthermore, provides for offices to receive copyright applications in the different political divisions of Peru. Registration is optional for authors or their assignees but mandatory for publishers who must effect registration within 30 days from publication or be subject to certain fines. Only the author, his assignees, or those expressly authorized may make use of a copyrighted work by publication, reproduction, or "transformation."

UNESCO provides a looseleaf service kept up to date by yearly supplements on the copyright laws and treaties of the world in which the Peruvian copyright statute of 1961, as translated from the original published in *El Peruano* of

⁷ *El Peruano*, Dec. 1, 1959.

Ley de Promoción Industrial no. 13270. In *Industria Peruana*, Tomo XXIX, no. 330, noviembre de 1959. 15 p.

Peruvian Industrial Promotion Law no. 13270 (Nov. 30, 1959) [Lima?] Dirección de Industrias y Electricidad [1959?] 33 p.

⁸ *El Peruano*, May 28, 1966.

⁹ *El Peruano*, Jan. 26, 1971.

¹⁰ *El Peruano*, Nov. 3, 1961.

¹¹ *El Peruano*, Oct. 26, 1962.

November 3, 1961, appears;¹² a 1963 compilation in Spanish contains both the law and its regulation.¹³ A recent, handsomely bound monograph by Juan Mariátegui Malarín,¹⁴ published under the auspices of the Cultural Center of Peru, treats of the subject exegetically.

The protective laws on both industrial and intellectual property are augmented and/or supplemented by various provisions in the civil and commercial codes relative to property rights and registration in general.

Peru's copyright statute extends equal protection to Peruvian and foreign authors domiciled in Peru. Following this equal protection policy, both native and alien authors are extended equal rights. Thus, under Supreme Decree 17 of May 9, 1963,¹⁵ royalties paid by Peruvian producers of phonographic records to foreign composers and authors domiciled in the country cannot be more than those paid to Peruvian composers and authors.

Nonresident authors are protected in accordance with multilateral conventions and bilateral agreements. Where none is applicable with reference to a particular foreigner, the alien will be accorded the same rights accorded to the Peruvian author in the country of the alien author. Peru is a signatory to the following bilateral agreements or treaties dealing wholly or partially with copyrights: Caracas Agreement of 1911 with Venezuela; Copyright Treaty of 1924 with Spain; and Treaty of 1951 with the German Federal Republic. It is also a party to the multilateral Buenos Aires Convention of 1910 with Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Paraguay, the United States, and Uruguay. In 1963 Peru subscribed to and actually ratified, under Decree 14496 of May 21, 1963,¹⁶ the Universal Copyright Convention adopted in Geneva on September 6, 1952.

Industrial and Investment Legislation

Industrial and investment laws in the past consisted of random pieces of legislation and merited no more than passing references in published works on

¹² United Nations Educational, Scientific and Cultural Organization. *Copyright laws and treaties of the world* . . . Paris, United Nations Educational, Scientific and Cultural Organization and the Bureau of National Affairs, Washington, D.C., 1956-1 v. (looseleaf) [Contains Peruvian Copyright Statute (Law no. 13714 of Sept. 1, 1961) in English]

¹³ Fajardo, Jesús Víctor. *ed. Código de los Derechos del Autor; texto íntegro de la Ley no. 13714 que regula y define los derechos de autor y su reglamentación aprobada por Decreto supremo no. 61*. Lima, Edit. Mercurio [1963?] 147 p.

¹⁴ Mariátegui Malarín, Juan. *Lineamiento del derecho de intérprete*. Lima, 1967. 169 p.

¹⁵ *El Peruano*, May 11, 1963.

¹⁶ *El Peruano*, June 5 and 11, 1963.

the major fields of law. In the last decade or so, however, this type of legislation has become more widespread, and it bears watching in the years ahead for its legal, political, and economic significance.

There are several contemporary legal source materials on the industrialization of Peru. A French work by Denis de Ricci,¹ published in Paris a few years before the adoption of Peru's Industrial Promotion Law, demonstrates the growing European interest in Latin American investments and provides prospective European investors with a cursory view of the tax and legal aspects of doing business in Peru and other Latin American nations. Peruvian author Arturo Nieves Ayala² contributed a work which was printed three years after the enactment of the 1959 Industrial Promotion Law (Law 13270) and consists of compiled excerpts or entire texts of statutes of interest to foreign corporations in Peru. It covers air, transportation, insurance, mining, banking, and other laws, as well as related treaties and case law.

Recent publications by the Confederación Nacional de Comerciantes (CONACO)³ and the Instituto Nacional de Promoción, in collaboration with the Banco Industrial del Perú,⁴ include the text of Law 13270 and its regulation, together with all complementary statutes, conventions, and other provisions in force as of 1967 and 1968, respectively.

Following the 1968 military takeover, Peru adopted the General Law on Industries (Decree-Law 18350 of July 27, 1970),⁵ which sets forth priorities in the industrial sector and other matters. Enterprises are classified into first,

¹ Ricci, Denis de. *Investissements en Amérique latine, aspect juridique et fiscal*. Paris, A. Peone, 1955-57. v. 1-2.

² Nieves Ayala, Arturo, ed. *Legislación sobre compañías e instituciones extranjeras; compilación de toda la legislación vigente referente a compañías e instituciones extranjeras, comprendiendo desde las compañías mineras, de aviación, navegación de ferrocarriles, de seguros, bancarias, benéficas y culturales, incluyendo tratados internacionales, jurisprudencia de los tribunales todo perfectamente concordado y anotado*. Lima [1962] 670 p.

³ Confederación Nacional de Comerciantes. *La Ley de Promoción Industrial y todos los regímenes legales de aliento a la industria*. Lima, 1967. 111 p.

⁴ Instituto Nacional de Promoción Industrial [y el] Banco Industrial del Perú. *Ley de Promoción Industrial no. 13270, reglamento y anexos. Ley 9140 y sus reglamentos. Leyes y otras disposiciones sobre industria manufacturera*. 3.ed. oficial con índices clasificados. Lima, Ministerio de Fomento y Obras Públicas, Dirección General de Industrias, 1968. 641 p.

⁵ *El Peruano*, July 30, 1970.

General Law on Industries: Decree-Law no. 18350. [Lima, Oficina Nacional de Información, 1970] 39 p.

Ley General de Industrias; D.-1. no. 18350 del 30 de julio de 1970. Ley de comunidad industrial; D.-1. no. 18384 del 1. de setiembre de 1970 con el texto del mensaje presidencial del 28 de julio de 1970 referente a la promulgación de la Ley General de Industrias. Lima, Edit. Mercurio [1970?] 88 p. (Legislación Peruana)

Ley General de Industrias [D.-1. no. 18350. Lima, Edit. "Guión," 1970] 26 p. (Guión. Edición Folletos, 8)

second, and third priority industries; a fourth category is nonpriority industries. It also provides tax, credit, administrative, and technological incentives. Article 35 of the decree-law declares the provisions of Law 13270 of 1959 inapplicable to industrial companies included in the 1970 decree which, in effect, supersedes the 1959 legislation.

Both industrial laws were aimed at promoting industries in general; the later one leans heavily towards nationalization of most industries. Thus, provisions are made to reduce foreign capital to lower levels. To achieve this, foreign corporations and those owned for the most part by foreign interests are required to enter into a contract with the state to ensure eventual "national participation."

CONACO continued its policy of publishing legislation related to industrial promotion.⁶ An English translation of the General Law on Industries appears in a periodical, *International Legal Materials*, published by the American Society of International Law in Washington, D.C.⁷ A great many of the expropriatory decree-laws from 1968 to 1969, including government documents and rulings anent other industries, have been translated into English and printed in volumes 8 (1969) and 9 (1970) of this periodical. Another English translation of the same industrial law has been published together with the Spanish text by Squirrel Publications,⁸ whose editorial office is located in Washington, D.C. Although extensively amended to date by Decree-Law 19262 on January 6, 1972,⁹ the General Law remains Peru's basic government decree on industries today.

As a result of the policies established in the foregoing decree-laws, Peru currently has virtually a monopoly or a substantial interest in such industries as transportation, utilities, salt, steel, fertilizers, hotels, oil, mining, and the mass media.

Together with Chile, Colombia, Ecuador, and Bolivia, Peru is a party to the Cartagena Agreement which establishes a common policy on foreign investment, patents, trademarks, and royalties. In accordance with this agreement, new foreign investment must be approved by the Peruvian government.

Investment decrees recently adopted include Decree-Law 19311 of March 7,

⁶ Confederación Nacional de Comerciantes. *Régimen industrial del Perú*. Lima, 1971. 303 p.; 2. ed. 1972. 397 p.

⁷ "Peru: Decree-Law 18350 on the Law of Industries [July 27, 1970]" In *International Legal Materials*, v. 9, 1970. p. 1225-1243.

⁸ *Peru's General Law on Industries. English and Spanish text of the General Law on Industries* . . . [Washington, Squirrel Publications. 1970] 43 p.

⁹ *El Peruano*, Mar. 8, 1972.

1972,¹⁰ which creates tax and other incentives to private capital that is devoted to national development, and Decree-Law 19470 of July 18, 1972,¹¹ which grants various incentives to foreign investment and external trade. In addition to investment guidelines, Peru has a number of recent reinvestment regulations. Two are embodied in Decree-Law 18818 of March 30, 1971,¹² which provides that individuals and corporations may reinvest in enterprises of the first, second, and third categories under the terms therein stipulated and enjoy income tax exemptions, and Decree-Law 18834 of April 13, 1971,¹³ which stipulates that individuals or corporations may reinvest up to 50 percent of their income in fishing companies and enjoy income tax exemptions to that extent.

From its modest beginnings in the fifties, Peru's fishing industry became the world's largest during the sixties, involving mainly anchovies which are processed into fishmeal. The emergence of fishing as a major element in the country's economy brought with it a phenomenal increase in the number of fishing vessels and demands from the labor force for tighter and closer government controls.¹⁴ To cope with problems directly related to maintaining the industry's growth, the government, since 1965, has been decreeing annual fishing quotas and official fishing days. As early as the fifties, government decrees endeavored to maintain a balanced supply of restricting commercial fishing within certain hours of the day and night and within certain locations.

These matters are dealt with in detail by César Belaúnde Guinassi,¹⁵ Alfonso Arévalo Alvarado Zañartú,¹⁶ and Jorge Rendón (in collaboration with Roberto Rendón),¹⁷ in extensive and well-coordinated annotated compilations covering the period from 1963 to 1969. They serve as excellent legal handbooks on the wide-ranging questions involving Peru's all-important modern fishing industry. All three sources provide interesting introductory and historical insights on the fishing industry. The Belaúnde and Arevalo compilation covers the gamut of relevant laws, decrees, resolutions, agreements, etc., and that of the Rendons treats of a special field which they call the "social rights" of the fisherman—his

¹⁰ *Ibid.*

¹¹ *El Peruano*, July 19, 1972.

¹² *El Peruano*, Mar. 31, 1971.

¹³ *El Peruano*, Apr. 14, 1971.

¹⁴ *Leyes, decretos y resoluciones sobre industria extractiva de pesca*. Lima, Asociación de Armadores Pesqueros del Perú, 1963. 109 p.

¹⁵ Belaúnde Guinassi, César. *La legislación pesquera en el Perú*. Lima [Edit. Universitaria] 1963. 601 p. (Biblioteca de Derecho)

¹⁶ Arévalo Alvarado Zañartú, Alfonso. *Manual legal de la industria pasquera del Perú*. Lima [Gráfica Panamericana, S.A.] 1968. 2 v.

¹⁷ Rendón, Jorge, and Roberto Rendón, comps. *Derechos sociales del pescador; compilación de normas*. Lima, Ediciones Tarpuy, 1960. 537 p.

status within the terms of the merchant marine regulations, the employment of minors in the industry, correlating provisions from the code of minors with special fishing regulations, rules governing fishing boat crews, requisites or qualifying factors for fishermen, requirements of registration in the fishermen's registry, vacation and maternity leaves, social security benefits, and a host of other matters directly involving the fisherman's rights as well as obligations.

With an eye towards the "maximum" and "rational" development of the industry, the present government enacted Decree-Law 18810 of March 25, 1971.¹⁸ Entitled the General Law on Fishing, the new edict repeals all provisions of previous contrary laws. Its regulation has been adopted under Supreme Decree 11-71-FE of June 25, 1971.¹⁹ Article 1 of the General Law declares the dominion of the state over all hydrobiological species in the state's territorial waters extending up to 200 miles, including all continental waters within the national territory (i.e., continental shelf), a subject that will be examined in more detail in the chapter on public international law.

*Commercial Arbitration*¹

Arbitration is dealt with in the statutory provisions of the Code of Civil Procedure, promulgated on December 15, 1911.² Articles 548 to 582 govern the procedure in general, articles 95 to 97 regulate the challenge of arbitrators, and articles 1155 to 1165 the enforcement of foreign decisions. In accordance with the Spanish practice as developed from the Napoleonic Code, arbitrators who act as de jure arbitrators have to be lawyers (article 551), unless the parties designated them as amigables componedores. Then they shall proceed according to the best of their knowledge and understanding (según su leal saber y entender, article 568).

¹⁸ *El Peruano*, Mar. 21, 1971.

General Law on Fisheries. Decree Law 18810. Lima, Ministry of Economy and Finance, Office of Public Relations [1971] 29 p.

Ley General de Pesquería. Decreto Ley 18810. [Lima?] Movimiento Cívico Defensor de la Revolución Peruana "Tupac Amaru," 1971. 40 p.

Confederación Nacional de Comerciantes. *Régimen legal para la pesquería.* Lima, 1971. 80 p.

¹⁹ *El Peruano*, June 30, 1971; July 2, 1971 [errata]

¹ This section is contributed by Martin Domke, adjunct professor of law, New York University. Dr. Domke, an expert in the field, rendered invaluable support to the original series of guides to the law and legal literature of the Latin American nations, for which the Library of Congress will always be grateful.

² *Código de Procedimientos Civiles.* Lima, Impr. y Fábrica de Fotgrabados Sanmartí y Cía., 1914. 243 p.

Montoya Manfredi, Ulises. "Peru." In *International commercial arbitration* (Handbook, Sanders, Pieter, General Reporter) v. 2. 1960, p. 60.

An arbitration clause in a contract providing for the settlement of future disputes is recognized as binding and enforceable (article 556). It is, however, necessary to supplement such agreement with a submission (*compromiso*) as prescribed by article 553 at the time when the controversy arises, especially to provide payment of the fine by the party who fails to carry out his obligations under the arbitration agreement. Should a party refuse to sign such a subsequent agreement or to appoint an arbitrator, the judge of the first instance shall do so at the request of the other party (article 567). The competent judge will also formulate that statement of the controversy, when the parties fail to agree upon the matter to be submitted to arbitration (article 556). The agreement to arbitrate, however, must be a public instrument except when the dispute is pending in court (article 552).

The challenge (*recusación*) of arbitrators may be brought for the reasons enumerated in article 89 and under the procedure (in the presence of the arbitrators) that is prescribed for challenge of judges of the first instance (article 95).³

The procedure of the arbitration may be determined in the agreement to arbitrate; otherwise, the arbitrators may establish the terms and forms of procedure (article 560). Awards may be rendered by a majority of the arbitrators (article 565). Appeals from awards of *de jure* arbitrators may be taken in the same manner as from decisions of ordinary judges, unless the right to appeal has been waived. An appeal to vacate an award may be taken for reasons enumerated in article 571, namely when the agreement is void or has expired or when the arbitrators exceeded their authority to determine the issue submitted to them. When a fine has been stipulated, it must be paid to the other party in advance at the time of making the appeal, unless an appeal to vacate is brought, in which instance the fine is deposited with the court in advance (article 574).⁴

As to the execution of awards rendered abroad, article 1155 provides that decisions of foreign tribunals will be declared enforceable if Peruvian decisions are executed in the country in question. Foreign decisions have to meet certain standard requirements prescribed in articles 1159 to 1162.⁵ Awards of countries

³ Pino C., Remigio. *Código de Procedimientos Civiles, en 13 tomos* . . . Arequipa, Escuela Tip. Salesiana, 1940. v. 2, p. 302.

⁴ Maúrtua, Vicente, and Justo Pérez Figuerola. *Anales judiciales de la Corte Suprema de Justicia* (July 4, 1912) v. 8, p. 102.

⁵ Bustamante y Sirvén, Antonio Sánchez de. *El Código de Derecho Internacional Privado, y la sexta conferencia panamericana*. Habana, Impr. Avisador Comercial, 1929. 253 p. [Translation in: Hackworth, Green Haywood. *Digest of international law*, 1941, v. 2, p. 86]

signatory to the Code of Private International Law to which Peru adheres are enforceable in any of the signatory states.⁶

International commercial arbitration, particularly the settlement of foreign trade controversies between Peruvians and nationals of other countries of the Western Hemisphere, has been facilitated through the Inter-American Commercial Arbitration Commission which administers a system of commercial arbitration as authorized by Resolution 41 of the Seventh International Conference of American States, held in Montevideo in 1933.⁷ Proposals to modernize the arbitration law and practice have been adopted by the Chamber of Commerce of Lima and the Peruvian Committee of the Inter-American Commercial Arbitration Commission.

⁶ Domke, Martin. "Inter-American commercial arbitration." In *Miami law quarterly*, v. 4, 1950, p. 425.

⁷ Goldman, Marvin G. "El arbitraje en las relaciones interamericanas; aspectos relativos a los mercados regionales." In *Revista jurídica interamericana*, v. 7, 1965, p. 95.

Criminal Law

History and Texts

A provisional statute, promulgated by General San Martín on March 17, 1821, as the Constitution for those provinces of Peru already liberated from Spanish control, decreed that all colonial laws, ordinances, and regulations which did not conflict with the principles of freedom and independence should remain in force until specifically repealed or revoked. Reiterated in the Provisional Statute of October 6, 1822, and in the Constitution of 1823, this provision applied to penal as well as civil and commercial laws. Although politically independent from Spain in 1823, Peru continued for some time to observe the Spanish colonial criminal laws or regulations, together with the locally enacted legislation which were scattered throughout the *Siete Partidas*, the *Recopilación de Leyes de Las Indias*, and the *Novísima Recopilación*.

Generals San Martín and Bolívar soon recognized the urgency of codifying this great contradictory mass of Spanish and local laws. A codification commission was appointed in 1825, under the chairmanship of Manuel Lorenzo Vidaurre y Encalada, first chief justice of the Supreme Court, to draft both civil and penal codes.¹ Nevertheless, the country remained for many years without a penal code that was inherently Peruvian. The Spanish legislation continued in force until 1836; then for a brief period the Santa-Cruz Criminal Code was in force.

While serving as an oidor, or judge, in the Real Audiencia of Lima in 1811, Chief Justice Vidaurre had already commenced work on a penal code. This work was completed in 1821 while he was a judge in the Audiencia of Havana, Cuba. Sensitive to the still unfulfilled need for a Peruvian penal code, he offered his work as a draft penal code. On September 1, 1828, while the

¹ Vidaurre y Encalada, Manuel Lorenzo de. *Proyecto de un código penal; contiene una explicación prolija de la entidad de los delitos en general, y de la particular naturaleza de los más conocidos* . . . Boston, Impresa por H. Tupper, 1828. 230 p.

chief justice was in Boston, Mass., the work, with some modifications, was sent to Congress for deliberation. Although it was never approved as law, the draft's accompanying instructive exposition was so well presented and expressed that criminal law commentators have continued to devote much discussion to the draft's merits.

A second drafting commission was authorized by a Decree of October 22, 1831, but it brought no results. The Constitution of 1834 decreed that draft codes be drawn up by members of the Supreme Court, but before any progress was made, Bolivia and Peru were confederated in 1836 under President Santa-Cruz. On June 22 of that year he decreed the Penal Code of Bolivia as the law in the state of South Peru, effective on October 13 of the same year,² and in North Peru, on November 1, 1836, enforceable on January 1, 1837.³ After the collapse of the Confederation in 1839, the previous Spanish penal legislation was reinstated.

In 1845 Congress authorized the president of Peru to appoint a codification commission to work on codes in all fields of law. Although a civil code and a code of civil procedure were produced by this commission within the two-year time limit fixed for the completion of its work, nothing was accomplished in the penal field. The success of the civil codification, however, postulated a reform of the criminal laws. By the Law of September 26, 1853, another drafting body was designated to undertake this task. Among the members appointed were Gervasio Álvarez, Manuel T. Ureta, Santiago Távara, Carlos Pacheco, and Ignacio Novoa. A draft of a penal code was completed in 1855,⁴ but political power plays and upheavals prevented its approval and delayed the drafting of a companion procedural code. A year later a new commission was appointed to revise the draft. Composed of José Simeón Tejada, chairman, Santiago Távara, José Gálvez, Tomás Lomas, and Ignacio Novoa, the committee completed the task of revision and on May 20, 1859, presented a draft penal code to Congress.⁵ This proposed code had been influenced by the provisions of the Constitution of 1856 relating to abolition of slavery, capital punishment, and specific crimes against the state. It borrows many principles from the Spanish Penal Code of 1850, including doctrines enunciated by French authorities and modern

² *Código Penal Santa-Cruz del Estado Sud-peruano*. Ed. oficial. Lima, Impr. de Eusebio Aranda, 1836. 180 p.; another ed. 1836. 167 p. [Printer varies]

³ *Código Penal Santa-Cruz del Estado Nor-peruano*. Ed. oficial. Lima, Impr. de Eusebio Aranda, 1836. 180 p.

⁴ *Proyecto de código penal trabajada por la comisión creada al efecto*. Lima, 1855.

⁵ Tejada, José Simeón. *Código penal del Perú presentado en proyecto al cuerpo legislativo por la comisión revisora*. Lima, Impr. por José M. Monterola, 1859. 137 p.

innovations from criminal science. Before the draft procedural code could be finalized or the penal code adopted, the 1860 Constitution was promulgated which required changes in the penal code. The Supreme Court had also offered some modifications in 1861. As a result, Congress, by Law of May 18, 1861, appointed a new commission to revise both of the proposed codes. As finally drafted, the penal code was approved on October 1, 1862,⁶ when official copies were printed. It did not become effective until March 1, 1863.⁷ All told, 10 years of work went into the drawing up of these codes since the creation of the original commission.

The need to discard this code became evident as early as the last quarter of the 19th century. Except for the continuing internal political upheavals and Peru's disastrous war with Chile, the 1863 code would have been superseded earlier than it actually was. Again drafting commissions were designated. Two such bodies were created under Supreme Decrees of March 17, 1871, and October 18, 1873. That of 1873 managed to present a draft to Congress on September 16, 1874. A supreme decree from President Mariano I. Prado designated a third commission on July 3, 1877, to work under Juan Antonio Ribeyro who was then Supreme Court chief justice. The draft of a penal code and its accompanying report were presented to Congress on December 12, 1878.⁸ A fourth commission designated under Supreme Decree of January 27, 1900, prepared a preliminary draft penal code. None of these drafts ever became law.

Finally, in 1915 another commission was created to draft a new criminal code. Among those named to this committee was the eminent law professor and jurist Víctor Maúrtua, who became the principal author of the draft code that he presented in 1916.⁹ The legislative group which approved this draft ruled that it should go into effect on March 18, 1918.¹⁰ Again because of the muddled political situation, Congress was unable to confirm the suggested effective date. Work on the new code, known since as the Maúrtua Code, was not

⁶ *Código Penal del Perú*. Ed. oficial. Lima, Impr. Calle de la Rifa, 1862. 114 p.

⁷ ———. Ed. oficial. Lima, Impr. Calle de la Rifa, 1863. 111 p.

⁸ Ribeyro, Juan Antonio. *Exposición que hace la comisión nombrada por el supremo gobierno para formular el proyecto de reforma de los códigos en materia penal*. Lima, 1879.

———. *Código penal del Perú. Proyecto de reformas presentado por la comisión nombrada por el supremo gobierno en 1877*. Lima, Impr. del Estado, 1879. 86 p.

"Anteproyectos de 1877 y de 1900-1902." In *La reforma del código penal*. Lima, Impr. y Libr. de San Pedro, 1918. v. 1. (Cámara de Diputados)

⁹ "Proyecto de 1916 presentado a la Cámara de Diputados." In *La reforma del código penal*. Lima, Impr. y Libr. de San Pedro, 1918. v. 2. (Cámara de Diputados)

¹⁰ Ley no. 3045. Reforma del código penal. In *Anuario de la legislación peruana*, 1918. p. 236-238.

resumed until 1921, when it was radically revised by a combined legislative and judicial committee. It was this revised version that was eventually approved on January 16, 1924, to become effective July 8 of the same year.¹¹ Following the liberal spirit of the 1920 Constitution then in force, the code, as originally adopted, did not provide for capital punishment which would only be reinstated by special legislation pursuant to the 1933 Constitution.

In addition to its being patterned on the Spanish Penal Code of 1850, the 1924 Code reflects, in certain sections, the influences of the draft Swiss Criminal Code of 1916 and the Argentine Penal Code of 1921. Maúrtua, principal drafter of the Peruvian code, was Peru's diplomatic representative to Switzerland from 1919 to 1922 and was thus heavily influenced by the legal institutions of that country.

A few days after the adoption of the code, a special law on vagrants was enacted, becoming an integral part of the code. A year later Law 5168 of July 31, 1925, authorized Drs. Angel Gustavo Cornejo and Plácido Jiménez to revise the provisions of the 1924 Code which in practice were inadequate. One of the problems that called for revisory efforts at an early stage was the code's mixture of procedural and substantive provisions. Another was the need for harmonizing the code's provisions with the procedural reforms of 1920. The committee of two went much further, however, and drew up instead an entirely new and radically different code in 1928.¹² This draft was so advanced from the recently adopted code that it was abandoned.

Serious efforts to reform the penal laws of Peru were resumed in 1964 when, in the traditional manner, a new commission was created. This commission worked patiently and slowly, producing in 1970 a new but not terribly divergent draft code. It was presented to the executive for study and consideration, but to date the government has failed to promulgate it. The 1924 Code, as amended over the past 48 years, is still in force in Peru.

¹¹ *Código Penal (Ley no. 4868)* Ed. oficial. Lima. E. Moreno. 1924. 174 p.; another ed. 1939. 182 p.

Código Penal, promulgado por Decreto Supremo de 27 de julio de 1924 en cumplimiento de lo dispuesto en la Ley no. 4868. [1.ed. and 2.ed. ?] [3.] ed. oficial. Lima, Tall. Gráf. de la Penitenciaría Central, 1948. 205 p.

Código Penal, concordancias; concordado con la Constitución, los demás códigos y leyes vigentes y jurisprudencia de la Corte Suprema de Justicia. [1.ed. ?] 2.ed. [Lima ?] 1956.

¹² *Código Penal; primer anteproyecto de la comisión parlamentaria nombrada conforme a la Ley no. 5168. Ponentes: A. Gustavo Cornejo, Plácido Jiménez.* Lima, 1927. 2 v. (Reforma de la legislación criminal y penitenciaria)

Proyecto de código penal presentado por la comisión parlamentaria—nombrada conforme a la Ley no. 5168, compuesta de los señores . . . A Gustavo Cornejo . . . y . . . Plácido Jiménez. Lima. Impr. Minerva, 1928. 172 p.

Literature

An early textbook on penal law was published in 1863 by Dr. Silva Santistéban¹ who has contributed similar works in other fields of law. His work was based on the provisions of the 1862 Penal Code. An unannotated edition of this same code was issued a few years later by Manuel Fuentes.² The volume contains the text of the procedural code in the penal field and also subsequent related legislation adopted through 1879.

From the prolific pen of Dr. de la Lama came an extensive work on the substantive and adjective aspects of criminal law,³ compiled in dictionary form. Under the alphabetically arranged topics are found summaries of the definitions found in legislation, interpretation by the courts, and excerpts from doctrinal authorities, with citation to the official sources. The law and practice on forensic medicine is included. A supplement of approximately 100 pages, arranged in the same style as the main part of the work, brings the legislation up through 1889.

An extensive commentary on the 1863 code was contributed by a criminal court judge, Dr. José Viterbo Arias.⁴ Comparison is made to corresponding provisions in European penal codes throughout the three volumes of this work. It has been cited as an authoritative work by later commentaries in this field.

The texts of the Criminal Code and of the Code of Criminal Procedure have been extensively annotated by Guillermo A. Seoane,⁵ in two editions. The notes consist principally of amendatory and complementary laws and regulations, as well as case law. The second edition is augmented by more recent legislation.

The penal codes have also been annotated by a former justice of the Supreme Court, Dr. Juan José Calle. The Code of 1862 was edited by Dr. Calle, with all of its subsequent modifying and related legislation to 1914,⁶ and a similar treatment of the 1922 Code⁷ appeared in two editions in 1924 and 1927. In the

¹ Silva Santistéban, José. *Curso de derecho penal*. Lima, Tip. del Autor, 1863. 220 p.

² Fuentes, Manuel A., ed. *Códigos penal y de enjuiciamientos en materia criminal con las innovaciones introducidas por las leyes novísimas y un apéndice*. Lima, Impr. del Estado, 1880. 218 p.

³ Lama, Miguel Antonio de la. *Diccionario penal de jurisprudencia y de legislación peruana*. . . . Lima, Impr. del Universo de Carlos Prince, 1889. 865 p.

⁴ Arias, José Viterbo. *Exposición comentada y comparada del Código Penal del Perú de 1863*. Lima, Libr. é Impr. Gil. 1898-1902. 3 v. (Biblioteca de El Diario Judicial)

⁵ Seoane, Guillermo Alejandro. *Códigos penal y de enjuiciamientos en materia penal, anotados con sus referencias, leyes modificativas y piezas judiciales declaratorias*. Lima, E. Rosay [1904?] 395 p.; 2.ed., aum. 1907. 395 p.

⁶ Calle, Juan José, ed. *Códigos Penal y de enjuiciamientos en materia criminal*. . . . Lima, Libr. é Impr. Gil, 1914. 408 p.

⁷ ———. *Código Penal (Ley no. 4868). Anotado y concordado*. . . . Lima, Libr. é Impr. Gil, 1924. 425 p.; 2.ed. 1927. 380 p.

1927 work comparative notes are inserted relative to corresponding provisions contained in the German, Swiss, Swedish, Italian, and Argentine penal codes.

A series of newspaper comments by Alejandro Morales on the draft code then under discussion by the public was collected and published in pamphlet form by its author in 1918.⁸

A critical study of the Peruvian code and penal legislation was the subject of a lengthy address delivered before the Lima Bar Association by Dr. Leonidas Avendaño. This was considered worthy of publication by *La Revista de Criminología, Psiquiatría y Medicina Legal*, an Argentine periodical on criminology and was subsequently reprinted in pamphlet form.⁹ Aspects of forensic medicine are particularly emphasized.

Following a visit to Lima to attend a scientific congress, the eminent Spanish jurisconsult, Dr. Jiménez de Asúa, published a monographic critique¹⁰ on the Maúrtua Code. The author is particularly critical of the noninclusion of provisions embodying the modern trends of penal science and quotes extensively from foreign laws and authorities to support his observations. Dr. Jiménez also published a comprehensive work on all Latin American codes, including that of Peru,¹¹ in which he compares the corresponding topics of each.

Abortion is discussed from the medico-legal and social points of view by a professor at the University of Lima, Guillermo Fernández Dávila.¹² The prologue was contributed by Dr. Jiménez de Asúa and the introduction by Dr. Lino Cornejo.

The noted authority and professor of criminal law at San Marcos University, Dr. Angel Gustavo Cornejo, is credited with several contributions to the legal literature in this particular discipline of law. Following the promulgation in 1924 of the Maúrtua Code, Dr. Cornejo published his excellent commentaries on its provisions.¹³ A 30-page introductory note to this work by Dr. Julián Guillermo Romero dealing with comparative law on this subject provides a distinct contribution in itself. An undated textbook¹⁴ on the general elements of criminal

⁸ Morales, Alejandro. *El proyecto del código penal. Sus grandes lineamientos. Sus detalles*. Trujillo, Tip. Olaya, 1918. 87 p.

⁹ Avendaño, Leonidas. *La reforma de la legislación penal*. Buenos Aires, Tall. Gráf. de la Penitenciaría Nacional, 1924. 53 p.

¹⁰ Jiménez de Asúa, Luis. *El derecho penal en la República del Perú*. [Valladolid ?] Tall. Tip. Cuesta, 1926. 113 p. (Univ. de Valladolid. Publicaciones de la Sección Estudios Americanistas. Serie Segunda, núm. III)

¹¹ ———. *Códigos penales iberoamericanos. Estudios de legislación comparada*. Caracas, Edit. Andrés Bello, 1946. 2 v.

¹² Fernández Dávila, Guillermo. *El delito del aborto*. Lima. Impr. Lux de E. L. Castro, 1926. 97 p.

¹³ Cornejo, Angel Gustavo. *Comentario al nuevo Código Penal*. Lima, E. Rosay, 1926. 447 p.

¹⁴ ———. *Derecho penal elemental. Parte general*. Lima, Impr. San Cristóbal, n.d. 200 p.

science is also the work of Dr. Cornejo intended for use by his students. More recent textbooks by this author on general principles of penal law¹⁵ and on special types of crime,¹⁶ as are found described in books 2 to 4 of the code, appeared in 1936 and 1937, respectively. Dr. Cornejo's valuable work on the drafting of a modern code had already established his status as an authority in his field.

Annotated editions of the criminal code were edited by Dr. Germán Zevallos,¹⁷ a justice of the Superior Court of Junín, with official authorization. The work included the statement of purposes signed by the members of the codification commission, as well as special related legislation and pertinent case law.

Several items on modern thought in criminology and on the special aspects of forensic medicine demonstrate the interest in this field of Juan Luis Hague,¹⁸ who, in addition to his monographs, has contributed frequently to the periodical literature of his country. His work *Estudios de sociología* is a compilation of some of his articles previously published in domestic and foreign periodicals.

A Peruvian statesman and judge, Dr. Germán Leguía y Martínez, compiled an extensive, alphabetically arranged digest of criminal legislation during two years of exile in Panama.¹⁹ This was published posthumously by his family in Peru.

Current trends in criminology, particularly the doctrines of the Italian school proposing the protection of society from criminals and from persons with criminal tendencies rather than punitive measures following the execution of the crime, is the work of Susana Solano.²⁰ This was published as a thesis by the Law School of San Marcos University and earned praise at home and abroad, particularly in Italy. After becoming a professional attorney, she wrote on the

¹⁵ ———. *Parte general del derecho penal*. Lima, Libr. Peruana de Domingo Miranda, 1936. 2 v.

¹⁶ ———. *Derecho Penal Especial*. Lima, Libr. é Impr. Gil, S.A., 1937. 1 v.

¹⁷ Zevallos, Germán D., ed. *Código Penal promulgado de 28 de julio de 1924. Edición oficialmente autorizada por resolución suprema de 17 de setiembre de 1927. Anotada y concordada*. Lima, Impr. Americana, 1927. 220 p.: 2^a ed. 1935. 203 p. [Printer and place of publication vary]

¹⁸ Hague, Juan Luis. *La caracterización del delincuente. Estudio técnico-jurídico*. Lima [1932] 47 p.

———. *Hacia un nuevo concepto de la responsabilidad criminal y de la pena (estudio crítico de derecho penal)*. Lima, Impr. y Lit. T. Scheuch, 1934. 97 p.

———. *Estudios de sociología, derecho penal y criminología*. Lima, Impr. de la Esc. de la G.C. y Policía, 1936. 239 p.

———. *El criterio de la peligrosidad en la legislación penal del Perú*. Lima [Edit. Minerva] 1937. 125 p. [Thesis]

¹⁹ Leguía y Martínez, Germán. *Diccionario de la legislación criminal del Perú*. Lima, Libr. é Impr. Gil, S.A., 1931. 846 p.

²⁰ Solano, Susana. *El estado peligroso. Algunas de sus formas clinicas no delictivas*. Lima [Impr. Edit. J.L.C.] 1937. 57 p.

application of criminal laws to the Indians of South America, particularly Peru.²¹ The theme of the criminal danger to society was treated again in an erudite work by Prof. Carlos A. Bambarén in 1937.²² A lecture he delivered several years previously was published under the same title.²³ He is also author of a monograph on social service in connection with criminal science.²⁴

Ricardo Elías y Aparicio, a professor of a course on criminology at the Escuela de la Guardia Civil y Policía, published two editions of his lectures for use as a textbook.²⁵ A brief treatise on the general elements of penal law was dedicated to the law students of San Marcos University by Dr. Mariano Peña Prado.²⁶

Dr. Bernardino León y León published a work containing a collection of seven papers suggesting reforms in the penal laws of America, which were to be presented to the Second Latin American Congress on Criminology,²⁷ held in Chile in 1941.

Dr. Carlos Zavala Loaiza, drafter of the Code of Criminal Procedure of 1940, presented a most interesting work at the 1941 criminology congress. The history and development of penal law and particularly of the substantive and adjective codes of Peru in this field are the subject matter of the present volume.²⁸ The work contains comparative notes and critical comments by the author.

The branch of criminal science dealing with penitentiaries and the sentences for crimes as practiced in his country is the topic discussed by Mariano Lahura.²⁹

A recent annotated edition of the Peruvian penal code was contributed by Sergio Cuba Torres.³⁰ A great proportion of the notes refers to court decisions and interpretation of the code provisions.

Dr. Percy MacLean y Estenós initiated the publication of an interesting study on the judicial interpretation of criminal law principles in the Latin American countries.³¹ The present volume covers only Argentine legislation and

²¹ ———. *El indígena y la ley penal*. [1.ed. ?] 2.ed. Lima, 1950. 23 p.

²² Bambarén, Carlos A. *El Estado Peligroso*. Lima, 1937.

²³ ———. ———. Lima, 1933. (Conferencia a los alumnos de la Escuela Penitenciaria de Vigilantes)

²⁴ ———. *Servicio social en las ciencias penales*. Lima, Impr. La Cotería, 1942. 38 p.

²⁵ Elías y Aparicio, Ricardo. *Criminología*. Lima. 1937; 2.ed. 1945. 343 p.

²⁶ Peña Prado, Mariano. *Breve tratado de derecho penal*. Lima, Edit. Ariel, 1938. 90 p.

²⁷ León y León, Bernardino. *Siete ponencias con sus respectivas proyectos de votos*. Lima, Empr. Edit. Peruana, S.A., 1940. 62 p.

²⁸ Zavala Loaiza, Carlos. *Sinopsis histórica de la legislación penal en el Perú*. Lima, Libr. é Impr. Gil, S.A., 1941. 88 p.

²⁹ Lahura, Mariano. *Derecho penitenciario y ejecución penal en el Perú*. Lima, La Cotería, 1942. 75 p.

³⁰ Cuba Torres, Sergio. *Código Penal del Perú. Ley no. 4868, anotado y concordado con la jurisprudencia de las tribunales*. Trujillo, Impr. Gamarra, 1943. 176 p.

³¹ MacLean y Estenós, Percy. *Legislación y jurisprudencia penal en América del Sur*. [Lima, Impr. Azul] 1944. 102 p.

practice. He was the editor of a periodical dedicated to penal and civil procedure, described in the chapter on legal periodicals.

A valuable item is a history of the development of criminal law.³² The work is divided into three parts. The first traces the growth of criminal justice in ancient times and the middle ages, then discusses in detail the theories and doctrines of such authorities in the field as Beccaria, Lombroso, Ferri, and others, briefly touching on such ramifications as criminal anthropology, psychoanalysis, ecclesiastical criminal law, and eugenics. The second part is devoted to domestic development, in the light of both the Indian and Spanish legislation and practice, through the period of independent Peru, tracing its growth to its present status. The third and final division is devoted to the author's recommendations for Peru's future development and policies in this field.

Commentaries are made by Gabriel Seminario Helguero and reforms in the regulation of crime and penal institutions in his country.³³ This was published by the Bureau of Prisons in the Department of Justice and Labor in 1945.

In the same year of publication of the preceding source material, Antonio Pinilla Sánchez dealt with the subject of criminology, specifically that of criminal psychology, rather than criminal law itself. In this succinct study, the author attempts to show the causal effects or relationship of mental disease to crime and the legal implications of the acts of the criminally insane.³⁴

Other works on special subjects within this field published from 1950 to the late sixties are numerous. A study by Luis Bramont Arias,³⁵ dean of the Law School at San Marcos University, relates to the problems of crime and its conceptual characteristics. The work, according to the authoritative opinion of Professor Jiménez de Asúa, was unique in Peruvian law. Three of the work's more interesting points are the theory that there is no crime where the law does not prescribe a penalty, the sources of penal law, and territoriality of criminal acts. The same author, in a subsequent work, deals with abortion.³⁶ He discusses all types of abortion—intentional, unintentional, therapeutic, forcible, consensual, nonconsensual, and those professionally administered—within the context of the provisions of the Peruvian penal code. A more recent and im-

³² Altmann Smythe, Julio. *Reseña histórica de la evolución del derecho penal con conclusiones sobre la futura política criminal del Perú*. Lima [Sanmartí y Cía.] 1944. 352 p.

³³ Seminario Helguero, Gabriel. *Notas sobre la reforma del régimen penal en el Perú . . .* Lima, Ediciones Penitenciaria Central, 1945. 170 p.

³⁴ Pinilla Sánchez Concha, Antonio. *Las personalidades psicopáticas y su significación frente a la ciencia penal*. Lima, Cía. de Impresiones y Publicidad, 1949. 54 p. (Publicaciones del Seminario de Derecho de la Univ. Católica del Perú, no. 3)

³⁵ Bramont Arias, Luis. *La ley penal; curso de dogmática jurídica*. Lima, Libr. Mundial de R. Meza Simich [1950] 309 p.

³⁶ ———. *El delito de aborto en el Código Penal peruano*. Lima, 1957. 187 p.

portant work by Dr. Bramont is a 1966 general annotation of the Penal Code in force.³⁷ César Morón Espinoza's treatise on legal medicine³⁸ covers pertinent civil and penal code provisions as well as related problems involving toxicology, legal psychiatry, sexology, and dental medicine or odontology. An essay by Alberto V. Sommaruga probes all the essential elements of self-defense, including the presence of aggression, provocation, and imminent danger, and the reasonable necessity to employ means to repel such aggression.³⁹ Juan Barletti Valencia contributed an exposition on Law 16185 of June 28, 1966, its regulation, and related administrative and financial laws or decrees vis-à-vis smuggling.⁴⁰

Several excellent contemporaneous sources on the penal code itself include the works of Julio D. Espino Pérez⁴¹ and Santiago Benites Sánchez.⁴² Following the same format, the two authors meticulously and extensively annotated their works with pertinent provisions from the Constitution, other codes, amendatory or supplementary laws, and Supreme Court decisions. That of Dr. Espino has gone through four editions, from 1947 to 1968. Octavio Torres Malpica, currently the chief justice of Peru's Supreme Court, issued a similar annotated text.⁴³ J. M. Valega,⁴⁴ José Montenegro Baca,⁴⁵ and J. V. Fajardo⁴⁶ contributed similar but less extensive works; the first employs footnotes for his

³⁷ ———. *Código Penal, anotado*. Lima, 1966. 584 p.

³⁸ Morón Espinoza, César. *Medicina legal, concordada con los Códigos Civil y Penal peruanos*. [1.ed. ?] 2.ed., aum. y corr. [Lima] Impr. del Servicio de Prensa y Publicaciones Técnicas de la Policía [1953] 168 p.

³⁹ Sommaruga, Alberto V. *La legítima defensa en la doctrina y en el Código Penal peruano*. Lima [1953] 42 p.

⁴⁰ Barletti Valencia, Juan. *El delito de contrabando; teoría general, legislación nacional, legislación comparada*. Lima, 1968. 249 p.

⁴¹ Espino Pérez, Julio D., ed. *Código Penal, concordancias, anotado y concordado con los demás códigos y leyes vigentes y jurisprudencia de la Corte Suprema de Justicia*. [Lima] 1947. 408 p.: 2.ed. 1956. 626 p.: 3.ed. 1962. 639 p.: 4.ed. 1968. 784 p. [Title varies]

———. *Decretos-leyes modificatorios del Código Penal*. [Breña, Peru, Edit. Jurídica] 1969. 87 p.

⁴² Benites Sánchez, Santiago. *Derecho penal peruano; comentarios a la parte general y parte especial del Código Penal*. Lima, 1952. 364 p.: [2.ed., corr. y aum.] 1958-59. 3 v.

⁴³ Torres Malpica, Octavio, ed. *Código Penal; prontuario, leyes modificatorias, concordancias, notas*. [Lima, Ediciones Jurídicas] 1965. 386 p.

⁴⁴ Valega, José Manuel, ed. *Código Penal del Perú (concordado) contiene las principales concordancias con el C. de P.P. Apéndice con las modificaciones de los artículos 53, 58, 118-21, y 124 del C. Penal*. Lima, D. Miranda [1948] 160 p.

⁴⁵ Montenegro Baca, José. ed. *Código Penal del Perú, con sus reformas y con síntesis marginales de cada artículo. Además, apéndice con disposiciones legales relacionadas con el código*. Trujillo, Libr. y Edit. Bolivariana [1962] 310 p. (Códigos del Perú)

⁴⁶ Fajardo, Jesús Víctor, ed. *Código Penal, concordado con la Constitución y los códigos civiles y procedimientos penales . . .* [1.ed. ?] 2.ed. [1963?] 148 p.: 3.ed. [1963?] 156 p.: 4.ed. 1964. 156 p. [Title varies]

annotations, the second uses marginal notes, and the third follows the conventional article-by-article annotation.

In 1953 and 1962 two case law books were published and edited by Helí Palomino Arana⁴⁷ and Américo Tello Lezama,⁴⁸ respectively. The first reproduces Supreme Court decisions in full, followed by relevant notes from the editor, and the second, which follows substantially the same format as the first, is presented in a digest style covering both penal and procedural fields. Considering Peru's paucity of legal reference tools of this caliber, these publications should prove invaluable to both the Peruvian and foreign legal researcher.

As this guide went to press, bibliographical tools in the Library of Congress revealed the publication by a certain F. Bonilla of the Penal Code as updated through 1971.⁴⁹ The Library of Congress recently received a valuable addition to its collections in the form of a treatise by H. H. A. Cooper, the English legal scholar and visiting law professor in Peru. The work is an excellent critique on the recently enacted basic Peruvian law (Decree-Law 17581 of April 15, 1969) governing the application of penalties in the country's criminal law system.⁵⁰

Some particularly interesting law and doctoral theses from San Marcos University covering the period from 1831 to 1972 are footnoted without further comment.⁵¹ Many of the authorities in this guide took their first step in Peru's legal literary field with these theses.

⁴⁷ Palomina Arana, Helí. *Jurisprudencia Penal Comentada*. [Huancayo] Edit. Cultura Hispana, 1953. 657 p. (Colección Francisco García Calderón)

⁴⁸ Tello Lezama, Américo, ed. *Jurisprudencia nacional en materia penal y procesal penal; [resoluciones de la Corte Suprema]* [1.ed. ?] 2.ed. Cuzco [Edit. Garcilaso] 1962. 488 p.

⁴⁹ Bonilla, F. *Código Penal, anotado y concordado con las últimas modificaciones introducidas a este cuerpo de leyes*. [Lima] Edit. Mercurio [1971] 174 p. (Legislación Nacional)

⁵⁰ Cooper, H. H. A. *Comentarios sobre la nueva legislación penitenciaria en el Perú*. Lima, Univ. Nacional Mayor de San Marcos, Dirección Universitaria de Biblioteca y Publicaciones, 1972. 114 p.

⁵¹ Aramburú, Andrés A. *Origen del Castigo*. Lima, 1868. [Thesis]

Fuentes, Manuel Aurelio. *El grado en que los diversos estados de la embriaguez pueden modificar la imputabilidad de los actos criminales*. Lima, 1874. [Thesis]

Eguiguren, Francisco J. *Delitos Políticos*. Lima, 1874. [Thesis]

Lavalle, José Antonio de. *Sobre Sistemas Penitenciarias*. Lima, 1880. [Thesis]

Prado y Ugarteche, Javier. *El método positivo en el derecho penal*. Lima, 1890. [Thesis]

Solf y Muro, Alfredo. *La penalidad de la reincidencia*. Lima, 1896. [Thesis]

Ríos, Augusto. *El Positivismo Penal*. Lima, 1897. [Thesis]

León y León, Bernardino. *La libertad y la responsabilidad en el derecho penal contemporáneo*. Lima, 1907. [Thesis]

Alayza y Paz Soldán, Luis. *El Delito Pasional*. Lima, 1911. [Thesis]

Concha, Carlos. *El problema de la criminalidad infantil*. Lima, 1914. [Thesis]

Valverde, Emilio F. *El delito de imprudencia*. Lima, 1914. [Thesis]

Benavides Canseco, Alberto. *La mujer ante el derecho penal*. Lima, 1915. [Thesis]

Rossel y Puga, Gerardo. *La pena de muerte en el Perú*. Lima, 1920. [Thesis]

Seoane, Juan. *La Sentencia Indeterminada*. Lima, 1926. [Thesis]

- Castilla, Luciano. *Una institución que debe desaparecer definitivamente en los sistemas penales actuales. La pena de muerte*. Lima, 1927. [Thesis]
- Leguía, Augusto. *Puede rehabilitarse al condenado cuando en lugar de sufrir la pena, ésta ha prescrito*. Lima, 1927. [Thesis]
- Villarán, Luis Felipe. *Reformas de nuestra legislación penal*. Lima, 1927. [Thesis]
- Altmann Smythe, Julio. *El problema sexual en los establecimientos penales*. Lima, 1930. [Thesis]
- Torre Tagle, José H. *El problema de la vagancia*. Lima, 1931. [Thesis]
- Delgado, Julio. *Puede ó no ser la embriaguez causa de justificación*. Lima, 1934. [Thesis]
- Puente Arnao D., Ernesto. *El delincuente y sus clasificaciones*. Lima, 1934. [Thesis]
- Lahura, Mariano. *Derecho Penitenciario*. Lima, 1939. [Thesis]
- Robles Ruíz, Gregorio. *Las medidas de seguridad deben sustituir a la pena o simplemente completarla?* Lima, 1939. [Thesis]
- Bendezú, Miguel A. *La alienación mental en el derecho penal peruano*. Lima, 1940. [Thesis]
- Calle Luna, Manuel. *Reparación civil a las víctimas del delito*. Lima, 1942. [Thesis]
- Carrasco, Roberto. *Historia de la pena penitenciaria en el Perú*. Lima, 1942. [Thesis]
- Cornejo Matos, Víctor. *El adulterio en el derecho penal*. Lima, 1942. [Thesis]
- Zúñiga Guardia, Carlos Ivan. *La teoría jurídica del homicidio en el Código Penal peruano; un proceso por homicidio político*. Lima, 1957. 325 p. [Thesis]
- Hurtado Pozo, José. *L'influence de la législation pénale suisse sur le Code Pénal peruvien (partie générale)*. Bienne, Switzerland, Imprimerie Andereg-Guenin, 1972. 186. [Thesis]

Criminal Procedure

History and Texts

The history and development of adjective criminal law in Peru have kept pace with those of substantive criminal law; in fact, adjective law has undergone a more recent codification.

The laws which regulated procedure for the administration of justice in criminal cases before the independence of Peru and for many years thereafter were contained in *Las Siete Partidas*, *Recopilación de Leyes de las Indias*, and other Spanish codes and local laws. The first constitutional bases decreed by General San Martín provided that the provisions of these Spanish codes and scattered local regulations should continue to be observed until new legislation could be enacted.

Examples of a few local laws included a regulation on the organization of the judiciary, dated April 10, 1822, which was adopted before the complete liberation of Peru from Spanish rule, and contained procedural provisions (articles 97 to 110) in the conduct of criminal cases. Another local regulation, the press law promulgated by General San Martín on November 12, 1823,¹ was in force until December 4, 1930, as slightly amended periodically, and established jury courts and special procedural rules regarding cases involving violations of the press law. A special law, dated May 27, 1831, underscored the need for a speedy trial and provided for rules to that effect in the special crimes of homicide, robbery, and theft.

Except for the brief period between 1836 and 1839 when Peru was divided into northern and southern states and was governed, effective January 1, 1837, until July 31, 1838, by General Santa-Cruz' Code of Judicial Procedure for both civil and criminal cases,² the criminal process was administered without the

¹ Ley de Imprenta, no. 159. In *Colección de Leyes*. 1831. v. 1, p. 395-401.

² *Código Santa-Cruz de Procedimientos Judiciales del Estado Nor-peruano*. Ed. oficial. Lima, Impr. de Eusebio Aranda, 1836. 166 p.

benefit of a national code of criminal procedure until 1863.

A codification commission appointed in 1825 failed, as did the commission of 1831, to complete a draft of a criminal procedure code. The Constitutions of 1828 and 1834 provided for public trials of criminal cases, abolished the use of torture to secure confessions, and prohibited confiscation of private property; personal guarantees or safeguards to life and liberty included provisions to the effect that no person could be compelled to give evidence against himself, his wife, or family relations in a criminal trial. Neither could he be condemned without a fair trial or held prisoner in excess of 48 hours without a hearing. All of these constitutional provisions would influence the contents of the evolving procedural code.

The labors of the 1845 general drafting commission resulted only in the completion of the two codes in the civil law field. This codification perforce made penal codification even more urgent and desirable. Subsequently, by Law of September 26, 1853, a special commission composed of three senators and five congressmen was designated for this task. Although the substantive penal code was drafted, that on procedure was never completed. On September 6, 1856, Congress urged a new commission to revise the draft penal code and to complete the draft on criminal procedure. The procedural code was presented to Congress for consideration on March 7, 1861,³ with an explanatory document signed by the chairman of the commission, José Simeón Tejada. A revision was made necessary almost immediately by the provisions of the newly adopted Constitution of 1860 and by certain recommendations made by members of the Supreme Court. The 1861 commission charged with revising the penal code was likewise entrusted to revise the procedural code; eventually, Congress on September 23, 1862, approved the Code of Criminal Procedure, as revised. However, it did not take effect until March 1, 1863,⁴ simultaneously with the penal code. Although subjected to a great deal of criticism for its inadequacies, it filled Peru's urgent need for codification in this branch of law.

Between 1863 and 1920 capital punishment was abolished and readopted several times, naturally forcing the incorporation of corresponding changes in the code provisions. Other modifications were implemented from time to time by special laws. Many attempts were made during this period either to draft a

Código Santa-Cruz de Procedimientos Judiciales del Estado Sud-peruano. Cuzco, Impr. Libre por Pedro Evaristo González, 1836. 152 p.

³ *Código de enjuiciamientos en materia penal presentado en proyecto al cuerpo legislativo por la comisión codificadora.* Lima, Tip. de Aurelio Alfaro y Ca., 1861. 145 p.

⁴ *Código de Enjuiciamientos en Materia Penal.* Ed. oficial. Lima. Impr. Calle de la Rifa, 1862. 52 p.; 2.ed. 1865. 55 p.

completely new procedural code or merely to revise the existing one. By Supreme Decrees of March 17, 1871, and October 18, 1873, special revisory commissions were named to work on the penal code and the code of penal procedure. The 1873 commission, under the chairmanship of Emilio Forero, presented to Congress a draft on September 16, 1874, which was never approved.⁵ A new commission, whose chairman was the chief justice of the Supreme Court Juan Antonio Ribeyro, was appointed on July 3, 1877, by President Prado. The draft of a procedural code was only partially completed when that of the penal code was ready and delivered to Congress. The procedural code draft was never published or presented for deliberation, unlike its companion code.

Supreme Decree of January 27, 1900, authorized work to be done on this codification by a new commission. Only a preliminary draft of the substantive code was completed, however, and it was not until 1915 that Congress again named another commission. The noted Dr. Víctor M. Maúrtua was put in charge of drafting the penal code, and Dr. Mariano H. Cornejo, the code of criminal procedure. This time the procedural code received quicker recognition than the substantive and was adopted four years earlier. With some revision in Congress, where most of the fourth book was rejected, the draft by this commission was approved by the Senate in 1916 and by the Assembly in 1919. As Law no. 4019, it was promulgated by the chief executive on January 2, 1920, becoming enforceable on March 18 of the same year.⁶ The rejected sections of book four concerned special procedure for cases of libel, slander, and defamation of character.

For several of the territorial departments the observance of the code was postponed until June 1, 1920. The provisions of this code were based principally on French and Spanish institutions and principles from other, more modern codes.

In 1928 an attempt at recodification in the criminal field was made by a committee of two, composed of Drs. Angel Gustavo Cornejo and Plácido Jiménez, but its drafts for a new criminal code and code of criminal procedure, although considered very progressive and modern, were not approved by Congress.

The Constitution of 1933 instituted some changes which had bearing on procedural matters. Accordingly, violations of the press law would be heard in the ordinary courts of justice rather than in the special jury courts. Capital punishment for such crimes as treason and murder was again permitted under

⁵ Forero, Emilio. *Proyecto de código de enjuiciamiento por jurados en materia criminal*. Lima, 1874.

⁶ *Código de Procedimientos en Materia Criminal*. Ed. oficial. Lima, Impr. Torres Aguirre, 1920. 110 p.

certain circumstances. On November 23, 1939,⁷ a new press law was promulgated which repealed all previous laws and amendments from 1822 to 1930 and declared in force the pertinent provisions of the previously suspended fourth book of the Code of Criminal Procedure.

Eventually the need to harmonize the provisions of the code with modern legal trends and particularly with the Constitution and special laws which had been enacted subsequent to the code's adoption in 1920 led to the creation on May 25, 1936, of another revisory commission. Dr. Carlos Zavala Loaiza, a Supreme Court justice, was named its chairman. Appointed members were Diómedes Arias Schreiber, Rubén Bustamante Ugarte, Fernando Luis Castro Agusti, Alberto Benavides Canseco, Marco A. García Arrese, and Juan José M. Valega. An anteproyecto, or preliminary draft,⁸ was completed the following year and was presented, together with its statement of purposes, to Congress on August 12, 1937. This draft was named for its principal author Dr. Zavala Loaiza in recognition of his excellent draftsmanship, and the code, as finally revised and promulgated, also carries his name. A few revisions were made by a new commission presided over by Dr. Fernando E. Palacios. Its members, designated by the president on August 25, 1937, were Drs. García Arrese, Benavides Canseco, and Arias Schreiber of the former commission, with the addition of Dr. Lino Cornejo, at that time president of the bar association of Lima. Pursuant to extraordinary legislative powers vested in the president, the final draft was promulgated by him on November 23, 1939, becoming effective on March 18, 1940.⁹ Unofficial annotated texts have since been published.¹⁰

⁷ *Ley de Imprenta* (Ley no. 9034). [Lima, Tall. Gráf. de la Penitenciaría, 1939 ?] 24 p. (República del Perú. Ministerio de Justicia)

⁸ Zavala Loaiza, Carlos. "Anteproyecto de código de procedimientos penales." In *Revista del foro* (Lima) July-Dec. 1937.

———. "Exposición de motivos del anteproyecto de código de procedimientos penales." In *Revista del foro* (Lima) July-Dec. 1939.

⁹ *Código de Procedimientos Penales. Ley no. 9024*. Ed. oficial. Lima, Impr. Americana, 1939. 93 p.

¹⁰ Palomino Arana, Helí. *Reforma del Código de Procedimientos Penales, del Código Penal y de la Ley Orgánica del Poder Judicial; acuerdos extraordinarios de la Corte Superior del Junín*. [Huancayo, "La Inmaculada," 1952] 46 p.

Valega, J. M. *Código de Procedimientos Penales, concordado*. Lima [1954] 94 p.

Fajardo, Jesús Víctor, ed. *Código de Procedimientos Penales. Concordado acuerdo con las leyes especiales*. Lima, Edit. Mercurio, 1957. 155 p.: 2.ed. [1962] 199 p.

———. *Manual para el litigante*. Lima, Edit. Mercurio, S.A. [1961?] 226 p.

Torres, Octavio, ed. *Código de Procedimientos Penales; prontuario, concordancias, y leyes modificatorias*. Lima, Edit. Jurídica, 1962. 287 p. (Leyes y códigos peruanos) 2.ed., aum. [1964] 321 p. [2.ed. published under author's full name: Torres Malpica, Octavio]

Bonilla, F. *Código de Procedimientos Penales, con las últimas modificaciones, comentado y*

The Peruvian criminal process as it exists today may be divided generally into two stages—a preliminary investigation, called the “instrucción,” and the trial or hearing, called the “juicio oral.” A civil action for damages is deemed filed with the criminal action and may be satisfied in the criminal judgment. A lawyer from a common law jurisdiction would certainly find this feature unique and perhaps objectionable on the grounds that standard of proof in a civil case is simple “preponderance” of evidence, and that in the criminal case is “beyond a reasonable doubt.”

Article 121 of the code provides that during the preliminary investigation, before taking the statements of the accused, the presiding judge must advise him of his right to counsel. If the accused does not have a lawyer, the judge must appoint one *de oficio*. If the accused refuses to be represented by counsel, such refusal must be made of record. It is during this stage that the facts are established. Later, these facts are incorporated in the “expediente” (pleadings or case papers), which become the basis of the arguments of opposing parties in the trial proper.

Experts say the most objectionable feature of the Peruvian system is the inordinate delay which an accused suffers from the initiation of a criminal action to its final resolution. Painfully conscious of this general complaint, the present government has endeavored through various amendments of the code to speed up the criminal process. Despite these amendments and earlier efforts initiated since 1964 to revise the 1940 code, as of this writing, it is still Peru's basic procedural law.

Literature

Those materials on criminal procedure which form part of the body of works already described in the chapters on civil procedure and the criminal code will not be treated in this section. As far as possible, only those items dealing specifically with criminal procedure and a few related sources will be incorporated here.

Chief Justice Vidaurre y Encalada, author of the first penal code draft, is credited with an early contribution to the legal literature on criminal procedure, which essentially is a plea for the enactment of legislation in this field. Addressed to the members of the legislature, it contains practical recommendations which, in the author's opinion, would serve to prevent arbitrariness in the adminis-

concordado de acuerdo con todo su articulado y con las leyes de procedimiento especial . . .
Lima, Edit. Mercurio [1971] 130 p.

tration of justice for certain crimes.¹

Among the contributions relating to the 1863 code itself are an index-digest of the contents of the code of criminal procedure as well as the criminal code by José Andrés Cateriano;² an annotated text by the editorial house of Courtheoux and Chateauneuf;³ and another annotated text by the distinguished Dr. de la Lama,⁴ supplemented later with an "appendix."

Dr. José Viterbo Arias, a criminal court judge, issued an erudite commentary on the same code. He criticizes its inadequacies, clarifies or interprets obscure points, and recommends reforms where necessary. Two editions of this work were published;⁵ much later a supplement to the second edition appeared.

Judge Pedro Martínez de Pinillos published a formbook which was adopted by the trial courts hearing criminal cases.⁶

With the adoption of the 1920 code, Dr. Calle promptly annotated its text,⁷ and upon the promulgation of the 1924 Criminal Code, he followed in 1925 with a second annotated work to correlate relevant provisions of the latter with those of the former. The same author contributed a manual⁸ with guidelines and legal forms for use by the justices of the peace courts in the conduct of cases involving misdemeanors or minor violations of the law.

Dr. Mariano Cornejo, the chairman of the second drafting commission, issued his own commentaries,⁹ which appear in italics following the individual

¹ Vidaurre y Encalada, Manuel Lorenzo. *Consulta sobre la necesidad que tenemos de algunas leyes sobre procedimiento criminal para impedir lo arbitrario en los jueces*. Lima, Impr. de José Masías, 1832. 24 p.

² Cateriano, José Andrés. *Indice analítico de los Códigos Penal y Enjuiciamientos en Materia Penal y de la Ley de 3 de noviembre de 1823*, . . . Lima, Impr. Calle de la Rifa, 1863. 39 p.

³ *Código de Enjuiciamientos en Materia Penal con citas, notas y concordancias*. Lima, Courtheoux y Chateauneuf, 1873. 45 p.

⁴ Lama, Miguel Antonio de la. *Derecho Procesal Penal*. Lima, 1906.

———. *Apéndice al derecho procesal*. Lima, 1907. 58 p.

⁵ Arias, José Viterbo. *Exposición comentada del Código de Procedimientos en Materia Penal del Perú*. [1.ed. ?] 2.ed., corr. y aun. Lima, Impr. de El Comercio, 1894. 335 p. (Biblioteca de "El Diario Judicial")

———. ———. *Addenda, á diversos comentarios de la segunda edición*. Lima, Impr. Torres Aguirre, 1899. 57 p.

⁶ Martínez de Pinillos, Pedro. *Formulario para la instrucción de juicios criminales*. [1.ed. and 2.ed.?] 3.ed. 1907. 51 p.

⁷ Calle, Juan José, ed. *Código de Procedimientos en Materia Criminal. Promulgado por el poder ejecutivo el 2 de enero de 1920. Anotado y concordado*. Lima, Libr. é Impr. Gil, 1920. 232 p.

⁸ ———. *Manual de instrucción criminal y de juicio por contravenciones o faltas con formularios para jueces de paz*. Lima, Libr. é Impr. Gil, 1920. 279 p.; 2.ed. (?) 3.ed. 1923. 610 p. [Title varies]

⁹ Cornejo, Mariano H. *Novísimo Código de Procedimientos en Materia Criminal promulgado el 2 de enero de 1920 . . . con breves comentarios*. Lima, Impr. Torres Aguirre, 1920. 163 p.

articles of the code. An interesting message from the author to the judges who must apply the procedural rules concludes the work. Dr. Aníbal Gálvez, secretary of the same codification commission, published a similar work.¹⁰

Francisco Quirós Vega, a prosecuting attorney attached to the Superior Court of La Libertad and a local law professor, published an instructive guide on rules of evidence that should be observed by the complainant, defendant, witnesses, and experts in a criminal trial, in accordance with general principles and particular provisions of the Peruvian code.¹¹

Class lectures delivered by Dr. Gustavo Cornejo, author of a modern draft code on criminal procedure, were collected, digested, and published as a textbook for his courses on procedure.¹²

Over the years, Peru has had different procedural rules on pretrial detention. Today the police may not detain an accused for more than 10 hours unless formal charges are filed or an order for "detención definitiva" is issued by a judge. Investigative procedures and police matters in general are therefore pertinent to a study of criminal procedure. Sources on the subject spanning the period from the 1930's to the 1960's have been edited and published by Carlos A. Valdivieso,¹³ Andrés Mogrovejo Rospigliosi,¹⁴ and Arturo Nieves Ayala.¹⁵

In his efforts to publicize the inadequacies of the criminal legislation of his country, Dr. Víctor Modesto Villavicencio, a jurist, published a series of articles on the defense of an accused in cases of parricide, adultery, and other crimes. These articles were later collected in one volume in 1933.¹⁶ Dr. Villavicencio is also the author of several other relevant works,¹⁷ including a biographical account

¹⁰ Gálvez, Aníbal. *Código de Procedimientos en Materia Criminal. Exposición y comentarios*. Lima, Impr. de "La Prensa," 1920. 198 p.

¹¹ Quirós Vega, Francisco. *Manual de crítica probatoria en materia penal*. Lima, Ofic. Tip. Casa de Moneda, 1927. 173 p.

¹² Cornejo, Angel Gustavo. *Derecho de procedimientos penales conforme al código de la materia. Primera parte*. Lima, Edit. Domingo Miranda. 1932. 280 p.

¹³ Valdivieso Gómez, Carlos A. *Tratado de legislación policial . . . arreglada y compilado*. Lima, Impr. de la Escuela de la Guardia Civil y Policía, 1932- v.

¹⁴ Mogrovejo Rospigliosi, Andrés, ed. *Legislación policial práctica, contiene reglamentos generales vigentes. Aprobada por la comisión nombrada para su estudio por la Dirección General de la Guardia Civil y Policía de 3 de mayo de 1954*. [1.ed. and 2.ed ?] 3.ed., corr. y aum. Lima, 1957. 248 p.

¹⁵ Nieves Ayala, Arturo. *Legislación vigente sobre la policía de investigaciones, PIP; obra que incluye los aspectos legales referentes a deberes, obligaciones y derechos; tipifica todas los delitos e inserta todas las disposiciones donde se puntualiza la infracción y su sanción*. Lima, 1966. 3 v.

¹⁶ Villavicencio, Víctor Modesto. *Defensas criminales y otros ensayos*. Lima, Libr. y Edit. Peruana, 1933. 134 p.

¹⁷ ———. *La reforma penitenciaria en el Perú*. Lima, Edit. Rivas Berrío, 1926.

———. *Algunos aspectos de nuestra sociología criminal*. Lima, Tall. de la Penitenciaría, 1930. 139 p.

of the work of the great Italian criminologist Enrico Ferri,¹⁸ and an excellent treatise¹⁹ on criminal procedural law treating of such topics as prescription of actions, functions, responsibilities and powers of the government prosecutor, and special proceedings for juveniles. It would be useful to note that proceedings against juvenile offenders in Peru are governed by a special law, the *Código de Menores* (Code of Minors). The text of the code which was previously in force, as well as its draft,²⁰ was published in 1945.²¹ A copy of the new Code of May 2, 1962, which took effect July 7, 1962, has been printed in Peru's official gazette.²² Another copy appears in a law journal.²³

Additional works on the 1920 code include Dr. Mauro Novoa Rodríguez' small manual for justices of the peace and the police,²⁴ and a contribution by Dr. Rodríguez Llerena, who also, inspired by subsequent legislation modifying both the 1924 Penal Code and the 1920 Code of Criminal Procedure, added an exegetic work²⁵ to his growing number of publications on other fields of law. He makes generous use of Supreme Court decisions to amplify his views.

Immediately after the promulgation of the 1940 code, another famous author and jurist, Dr. Guzmán Ferrer, annotated its text.²⁶ Extensive cross-references are made to the previous codes, including their drafts, as well as to codes in other fields, related laws, and court decisions. An excellent reference tool, it has been updated in several editions through 1966.

A comparative law study on criminal procedure by the distinguished Peruvian fiscal, Percy MacLean y Estenós, was published in Buenos Aires.²⁷ Unfortunately no copy of this work was located for examination.

Peru does not have a body of rules on evidence such as exists in common law jurisdictions to provide definite guidelines for the admissibility and overall evaluation of proof, both testimonial and documentary. Whatever rules there

¹⁸ ———. *Enrico Ferri*. Lima, 1929. 22 [1] p.

¹⁹ ———. *Derecho procesal penal, de conformidad con el Código de Procedimientos Penales del Perú*. Lima, 1965. 319 p.

²⁰ *Proyecto de Código de Menores, presentado por la Comisión revisora nombrada por Resolución suprema de 24 de febrero de 1938*. Lima [Imp. "Lux" de E. L. Castro] 1939. 59 p.

²¹ *Código de Menores, formulado por la comisión del Congreso presidida por Elías Lozada Benavente*. Lima, Impr. Torres Aguirre, 1945. 89 p.

²² *El Peruano*, May 7, 8, 1962.

²³ *Revista Jurídica del Perú*. 1962. v. 13, p. 108-125.

²⁴ Novoa Rodríguez, Mauro. *Procedimiento criminal práctico para jueces de paz y guardia civil*. [Lambayeque] Tip. La Gaceta de Lambayeque, 1935. 93 p.

²⁵ Rodríguez Llerena, Darío. *Código de Procedimientos en Materia Criminal . . . concordado y comentado . . .* Chiclayo. Libr. é Impr. Mendoza, 1936. 601 p.

²⁶ Guzmán Ferrer, Fernando. *Código de Procedimientos Penales, concordado . . .* Lima, Impr. Americana [1940] 343 p.; 2.ed. 1942. 335 p.; 3.ed. 1947. 336 p.; 4.ed. 1951. 366 p.; 5.ed. 1956. 397 p.; 6.ed. 1966. 418 p. [Title and printer vary.]

²⁷ MacLean y Estenós, Percy. *El proceso penal en el derecho comparado*. Buenos Aires, Libr. Jurídica V. Abeledo, 1946. 351 [1] p.

may be are found in procedural codes and are primarily concerned with "means" and/or categories of proof. In view of this, the importance of Luis del Valle Rándich's 1961 treatise on evidence is required reading for the Peruvian criminal trial lawyer.²⁸ This book was reprinted in 1964 under a different title.²⁹ Valle Rándich, a professor of law at San Marcos University and a deputy prosecutor (fiscal suplente), produced in 1966 a substantial work covering significant aspects of adjective law: cuestiones prejudiciales, cuestiones previas, and excepciones (demurrers).³⁰ The first two aspects are procedural concepts approximating that of prejudicial questions. His latest work bears a 1967 imprint³¹ and examines the parte general of the 1940 code, i.e., the general principles of criminal procedure.

Another scholar, Domingo García Rada, emerged among the ranks of Peruvian authors treating criminal procedure in the sixties. He devoted one whole volume to an analysis of the institutions of Peru in this field,³² based on expertise gained from a professorship of criminal law at San Marcos University and considerable tenure as a judge with experience in both civil and criminal cases. The excellence of this work has been publicly acknowledged by the Ministry of Education, which in 1965 conferred upon García Rada the Francisco García Calderón National Cultural Award. The prize-winning work was followed by an even more exhaustive one on "instrucción,"³³ the investigative phase in the criminal judicial process in Peru.

To conclude this chapter, a few outstanding law theses from San Marcos University are listed below³⁴ as possible reference sources.

²⁸ Valle Rándich, Luis del. *Medios de prueba en el derecho procesal penal*. Lima [Edit. Chalaca] 1961. 221 [2] iii p.

²⁹ ———. *Derecho procesal penal; la prueba*. Lima, 1964. 288 [5] p.

³⁰ ———. *Derecho procesal penal; cuestiones prejudiciales, cuestiones previas, excepciones*. [Lima, Impr. Liurimsa] 1966. 254 [10] p.

³¹ ———. *Derecho Procesal Penal*. [Lima, 1967?- 1 v.]

³² García Rada, Domingo. *Instituciones de derecho procesal penal*. [Lima] Ediciones Studium [1965] 486 p.

³³ ———. *La Instrucción*. Lima, Sanmartí Impresores, 1967-(68) 2 v.

³⁴ Fuentes, Manuel Aurelio. *La Prisión Preventiva*. Lima, 1874. [Thesis]

Aparicio y Gómez Sánchez, Víctor. *Necesidad de los juzgados de instrucción*. Lima, 1911. [Thesis]

Buenos y de la Fuente, Bruno. *Breve estudio crítico sobre el Código de Enjuiciamientos Penal, y las principales reformas del proyecto del nuevo código*. Lima, La Opinion Nacional, 1919. 75 p. [Thesis]

Freundt Rosell, Alberto. *La condena condicional y la revisión de los procesos*. Lima, 1919. [Thesis]

Villarán, Luis Felipe. *La formación de un jurado para los asuntos penales o la ampliación de las facultades de los jueces*. Lima, 1927. [Thesis]

Gastelú P., Fabio. *El recurso de "habeas corpus."* Lima, 1932. [Thesis]

Mendoza, José. *El procedimiento penal a través de la historia*. Lima, 1940. [Thesis]

Arana Cuadra, Carlos. *La prueba indiciaria en el procedimiento penal*. Lima, 1943. [Thesis]

Judicial System

History and Texts

H.H.A. Cooper, former visiting professor of English law at San Marcos University and currently deputy director of the Criminal Law Education and Research Center at New York University, makes this observation concerning the judicial system and legal institutions of Peru:

The Spanish conquest of 1532, brief and cataclysmic, swept away the despotic but beautifully ordered Incaic system, replacing it with European institutions. Notwithstanding the cultural awakening that followed the Liberation of 1821, Peru's legal institutions and attitudes have tended to bear the impress of the long, formative years of Spanish colonialism. Although for a brief period during the 19th and early 20th centuries Peru's jurists turned their eyes to the common law countries, there remains little to show for this fleeting influence. There are no courts and few concepts traceable to pre-Hispanic origins.¹

The judicial organization in colonial Peru did not recognize the separation of powers, which was established almost immediately in the Republic upon its emancipation from Spain. In that early period there existed many types of courts with varying duties and overlapping jurisdictions. Some of the judicial bodies, in addition to administering justice, were permitted to exercise political, economic, and governmental powers. The officials of the cabildos, who administered justice in the cities, were elected; others, such as the corregidores, intendentes, and members of the audiencia, the highest court, were appointed and sent to the colony by the king of Spain. Lesser trial courts could appeal to the Real Audiencia de Lima and to the Chancillería de Indias, with final resort before the Real y Supremo Consejo de Indias.

The Real Audiencia y Chancillería de Lima was created by Emperor Charles of Spain in his Real Cédula dated November 20, 1542. Its original jurisdiction

¹ Cooper, H. H. A. "The Administration of Justice in Peru." In *The Journal of the American Judicature Society*, v. 53, no. 8, Mar. 1970, p. 338.

———. "Peru's 'New Look' Judiciary." In *The Journal of the American Judicature Society*, v. 55, no. 8, Apr. 1972, p. 334-337.

extended southward along the coast to Chile, northward to Paíta, and inland to the Reino de Quito. This jurisdiction, which proved unwieldy because of its great extent, was later restricted by the creation of other audiencias, namely that of Charcas in 1559, of Chile in 1565, and much later that of Cuzco in 1787. The audiencia was not a mere court of justice; it was often ordered to assume administrative duties in the absence of the viceroy. The viceroy was permitted to hear cases in the audiencia, but the decisions were always rendered by the oidores, or judges.

There were myriads of special courts in the colonial era, such as mining courts (Real Tribunal de Minería), commercial tribunals (Tribunal de Consulado),² courts to hear special cases relative to disputes over ownership and distribution of waters (Juzgado de Aguas), those to administer justice with regard to crimes committed in uninhabited places (Tribunal de la Hermandad) and violations of laws and crimes committed by doctors, surgeons, pharmacists, and barbers (Tribunal de Protomedicato), ecclesiastical courts (Tribunal Eclesiástico), tribunals to hear cases concerning litigation over property belonging to deceased Spaniards (Juzgado de Bienes de Difuntos), and others such as military courts, courts of accounts, tax courts, and other minor tribunals.

This picture was altered substantially with the proclamation of emancipation. The first two "provisional" basic laws signed at Huaura and Lima in 1821, making General San Martín Peru's first ruler, stated that as long as enemies remained within its borders, he personally would administer the executive and legislative duties. He would abstain, however, from interfering with the administration of judicial functions, because the independence of this branch was the sole and true safeguard of the people's freedom.³ These early charters provided for an Alta Cámara de Justicia (Superior Chamber of Justice).

The independence of the judiciary was thus initiated at a very early date in Peru. The provisions of the Constitution of 1823 maintained the separation of the three powers in definite terms. The exercise of judicial power was to reside exclusively in the courts of justice, and appointments of the justices were for life, depending on their good behavior. This Constitution created a Supreme Court of Justice in Lima, with superior courts in Lima, Trujillo, Cuzco, and Arequipa. Inferior courts were to be established later by special law. Jury courts for criminal trials were also authorized by the constitutional provisions.

² *El índice del archivo del Tribunal del Consulado de Lima, con un estudio histórico de esta institución por Robert Sidney Smith*. Lima, 227 p. (Ministerio de Hacienda y Comercio. Archivo Histórico. Sección Colonial)

³ Estatuto provisional expedido por el General José de San Martín en Lima el 8 de octubre de 1821. In Olivo, J. F. *Constituciones políticas del Perú*. Lima, 1922, v. 1, p. 11-23.

The Supreme Court of Justice was duly installed with appropriate solemnity on February 8, 1825, pursuant to the decrees of Gen. Simón Bolívar dated December 19 and 22, 1824.⁴ The first president, or chief justice, appointed was Dr. Manuel Lorenzo de Vidaurre y Encalada, previously a lifetime *oidor* in the Real Audiencia de Cuzco.

The Bolívar Constitution of 1826, which was in force only briefly in Peru, was forcibly rejected for many reasons. Among other objections, it was alleged that too many restrictions were placed on the autonomy of the judiciary. Subsequent constitutions affirmed the independence of the judicial power from the legislative and executive branches and continued the permanent appointments of the magistrates. This setup was not altered by the confederation with Bolivia, which lasted from 1836 to 1839, although early in 1836, Gen. Andrés Santa-Cruz, president of the confederation, substituted a provisional Tribunal Supremo de Justicia for the former Supreme Court. The Pact of Tacna of May 1, 1837, provided that each of the three divisions of this union—North and South Peru and Bolivia—would have its own judicial apparatus. A special tribunal composed of three justices, one each from the three districts appointed by their respective supreme courts, and a government attorney (*fiscal*) named by the Senate of the confederation, was established in Lima to hear cases relating to admiralty, crimes committed by public functionaries, and other specified cases.

The manner of appointment, the number of justices and other officials, and other details concerning the judicial system of Peru from 1839 to date have varied with the different constitutions.

In the provisions of the Constitution of Juancayo of November 10, 1839, a Court of Seven Justices, was created especially to hear complaints against incumbent judges.

The Constitution of 1856 made the only exception to the rule of permanency of judges' tenure, when it provided for definite terms of office to be fixed subsequently through the passage of an implementary law. Before long, however, the Constitution of 1860 reverted to the principle of irremovability from office of these officials except for bad conduct.

The 1920 Constitution affirmed these basic principles, although it provided for many innovations in certain areas of the judicial system. Among other changes, it provided for a system to ratify the appointments of judges throughout the Republic every five years at a full session of the Supreme Court. As a result

⁴Decretos nos. 49 y 57. In *Colección de leyes, decretos y ordenes* . . . Lima, Impr. de José Masías, 1832. v. 2, p. 45-46.

of a revolution in August 1930, catapulting Luis Sánchez Cerro to the presidency, the incumbent justices on the Supreme Court were discharged.

During the deliberations on a new constitution in 1931, the members of the Colegio de Abogados and the Supreme Court were consulted as to provisions to be included concerning the judiciary. The report of the court was presented on April 14, 1932.⁵ The Constitution, as it was finally adopted in 1933, provides for a Supreme Court of Justice in the capital, a number of superior courts in the departments designated by law, courts of first instance, or trial courts, in the provincial capitals, and justice of the peace courts of various categories in a majority of the towns. The Constitution further provides that a subsequent law would deal with the organization, setting forth the manner of appointment of judges, other officials, and employees of the courts, and the conditions and requirements to be followed. The Supreme Court justices and officials would be selected by Congress from among 10 candidates (*decena*) nominated by the executive; a system of ratification of inferior court officials every five years by the Supreme Court would be retained, but otherwise appointment was for life. Created as an integral part of the Supreme Court are the positions of five *fiscales*, officers of the court, who have no known counterparts in common-law countries. These court officials were a curious blend of prosecuting attorneys and advisers to the court. The two senior *fiscales* were assigned to civil matters, the third in rank to criminal affairs, and the last two to administrative cases. In practice, their opinions, generally published as *vistas fiscales*, carried much weight with the court.

Legislation concerning the details of organization and reorganization of courts, was promulgated from time to time. The earliest of these laws and regulations was enacted on April 10, 1822,⁶ to regulate the field temporarily until complete freedom from Spain could be achieved and a permanent constitution adopted.

During the Peru-Bolivian Confederation,⁷ President Santa-Cruz issued a regulation dated December 10, 1836,⁸ providing for the reorganization of the

⁵ La reforma del poder judicial. Informe de la Corte Suprema al Congreso Constituyente. In *Revista del foro*, Jan.-Dec. 1932, p. 179-186.

⁶ *Reglamento provisional dado por el Supremo Delegado para el régimen de los tribunales de justicia en los departamentos libres, ínterin se establece el código permanente del estado*. Lima. Impr. de Don Manuel del Río, 1822. 23 p.: another ed. [n.d.] 94 p.

⁷ Ortiz de Zevallos Paz-Soldán, Carlos, *comp. Confederación Perú-Boliviana (1835-1839). Recopilación y prólogo por . . .* Lima, Ministerio de Relaciones Exteriores del Perú, 1972-v.(1) (Archivo Diplomático Peruano, t. 9)

⁸ *Reglamento orgánico de los tribunales y juzgados del Estado Nor-peruano*. Lima, Impr. de Eusebio Aranda, 1836. 70 p. [With: *Código Santa-Cruz de Procedimientos Judiciales del Estado Nor-peruano*. Lima. 1836.]

judicial system. Although first enacted for North Peru, it was subsequently extended to South Peru. This document of 493 articles dealt with the Supreme Court, the classes of inferior courts, their jurisdictions, requirements, functions, and restrictions and regulated such other officials employed in the tribunals as attorneys, notaries, special witnesses, and legal representatives for the Peruvian Indians. On December 28, 1839, President Gamarra issued a brief regulation organizing the tribunals in accordance with the prevailing constitution, and on the basis of this, on January 1, 1846, a revised and more extensive organic regulation, somewhat similar to the 1836 regulation, was promulgated by President Castilla.⁹ This legal document included provisions on special courts such as mining, commercial, military, ecclesiastical, and that of the seven justices described earlier.

The 1846 regulation was repealed on May 20, 1854,¹⁰ by a new regulation whose observance was ordered by President Echenique. Before it could be enforced, however, President Castilla was returned to power. On February 14, 1855, Castilla decreed this law to become effective on April 19, 1855,¹¹ in the same terms as it has been decreed by Echenique. Among other innovations, this regulation required periodic visits to the prisons by the justices and empowered the Supreme Court to investigate and try public officials for malfeasance. The special procedure to be observed in trying criminal cases was also included, pending the drafting of a procedural code.

On December 15, 1911, a new organic law for the judiciary (no. 1510) was drafted,¹² together with the new Code for Civil Procedure. Eventually, effectivity of the former law was decreed to commence on July 28, 1912.¹³ Subsequently, the justice of the peace courts were regulated by a new code promul-

⁹ *Reglamento de tribunales*. Ed. oficial. Lima, Impr. de Eusebio Aranda, 1846. 67 p.

Reglamento de juzgados y tribunales de la República. In *Colección de leyes, decretos, y ordenes*. Huaraz, Impr. de la Colección, 1852. v. 8, p. 353-404.

Reglamento de tribunales. [Lima? 1852?] 112 p.

¹⁰ *Reglamento de tribunales y juzgados*. Lima, Impr. del Estado por E. Aranda, 1858. 105 p.

¹¹ Decreto dictatorial de promulgación. In *Colección de leyes, decretos y ordenes . . . 1821-59, . . . por Dr. D. Juan Oviedo*. Lima, Felipe Bailly. 1863. v. 11, p. 282, no. 831.

¹² Comité de Reforma Procesal (Perú). *Proyecto de ley orgánica del poder judicial que presenta al poder ejecutivo del Comité de reforma procesal*. Lima, 15 de julio de 1909. Lima, Libr. é Impr. Gil, 1909. 41 p. [No. 3 of a volume of pamphlets entitled *Código de Procedimientos Civiles. Ley Orgánica del Poder Judicial*.]

¹³ Ley no. 1510. Aprobando los proyectos de ley orgánica del poder judicial y de ley de notariado . . . In *Anuario de la legislación peruana de 1911*. Ed. oficial. v. 6, p. 51-52.

Ley Orgánica del Poder Judicial. Ed. oficial. Lima, Sanmartí y Cía., 1912. 57 [2] p.

Ley Orgánica del Poder Judicial, Código de Procedimientos Civiles, Ley de Notariado y tabla de términos de distancia . . . Lima, Impr. y Fábrica de Fotgrabados, 1914. 367, x p.

gated by President Manuel Prado on July 16, 1945.¹⁴

The basic law on the judiciary included provisions similar to those of the regulations already described above. Innovations included the creation of the *procuradores generales*, or government prosecuting attorneys, replacing the former *fiscales*. Some of the former courts were abolished, and new ones, i.e., labor and traffic courts, created.

In the early fifties, preliminary studies were undertaken to overhaul once again the judicial system of Peru.¹⁵ It was not, however, until the sixties that definitive results were achieved. In 1963 Decree-Law 14605 of July 25, 1963, approved another Organic Law of the Judiciary¹⁶ repealing Law 1510 of 1912. Pursuant to the 1963 decree, the country's judicial structure appears substantially the same as envisaged in the 1933 Constitution and the existing criminal and civil procedure codes. The jury system introduced by the Anglophiles in the 19th century never found its way back into the statute books despite serious attempts in this direction in the 1920's. The Supreme Court, with national jurisdiction, the superior courts, with departmental jurisdiction, and the courts of first instance, with provincial jurisdiction, remained the basic judicial powers that they were under previous laws. Under the 1963 charter the Supreme Court had a membership of 11 *vocales* (justices); the *fiscales*, replaced by *procuradores generales* under the law immediately preceding, were reinstated; broader requisites for appointment to the bench were laid down; and the office of public defender was created.

Pursuant to the agrarian reforms of 1969, agrarian courts known as *juzgados de tierras*, were created to expedite resolutions of land problems. Their decisions were made appealable to the *Tribunal Agrario*, a court approximating the prestige and stature of the Supreme Court. At the close of 1969, Decree-Law 18060¹⁷ provided broad reforms in the judiciary particularly in the composition

¹⁴ *Código de Justicia de menor cuantía promulgado el 16 de julio de 1945 en uso de la autorización contenida en la Ley no. 9946*. Ed. oficial. Lima, Tall. Gráf. de la Penitenciaría Central, 1945. 66 [2] p.

¹⁵ *Anteproyecto de ley orgánica del poder judicial, preparado por la Comisión Especial designada por Resolución Suprema no. 30 de 19 de abril de 1952*. [Lima, 1954] 73 p.

¹⁶ *Ley Orgánica del Poder Judicial*. Lima [Maldonado, 1963] 83 p. (Biblioteca Jurídica, 1) *Ley Orgánica del Poder Judicial (Decreto-Ley no. 14605)* [Lima] 1963. 71 [3] p.

———. Lima, Edit. Tesis, 1964. 95 p.

La nueva Ley Orgánica del Poder Judicial. Decreto-Ley no. 14605. Lima, Edit. Mercurio, S.A., 1964. 150 p.

Alzamora Valdez, Mario. *Ley Orgánica del Poder Judicial (Decreto-Ley no. 14605); seguida por el informe de la Comisión para el estudio del anteproyecto de Reforma, y de la conferencia: "La nueva L.O. del P.J.," . . . más la transcripción de leyes que la reforman o aclaran*. Lima, 1965. 121 p.

¹⁷ *El Peruano*, Dec. 24, 1969.

of the Supreme Court, the tenure of justices, their nomination, and appointment. Under the terms of this reorganizational decree, a Consejo Nacional de Justicia, composed of 10 outstanding Peruvian lawyers, was charged with screening and appointing all candidates for the bench except justices of the peace. As a result of this reorganization, the 11 incumbent Supreme Court justices were dismissed and replaced by 16 members with a fixed tenure of five years.

Many lower court justices were likewise replaced. The Supreme Court's offices of *fiscales* were abolished except one which was charged with handling administrative cases. The Court itself was divided into three *salas*, two to handle civil matters, and the other, criminal cases. The new law also provided for measures intended to simplify trials in general and superseded all provisions of Decree-Law 14605 as well as provisions of other laws, which are contrary to it. In 1971 the *Ley Orgánica del Consejo Nacional de Justicia* (Decree-Law 18831 of April 13)¹⁸ was promulgated, granting the 10 members of the Consejo the same status, tenure, and emoluments enjoyed by the Supreme Court justices. This organic law grants autonomous powers to the Consejo and, in effect, makes it a super appointing power and investigative agency of the judiciary.

Literature

In 1873 Dr. Manuel Atanasio Fuentes contributed a handbook of legal forms for use in the justice of the peace courts.¹

Documents covering a year's work of the Supreme Court and involving both administrative and judicial questions were published in 1877.² The following year Chief Justice Ribeyro compiled legal instruments³ relative to the creation and growth of the Supreme Court and the early organization and development of the judiciary; this collection bears a title similar to the series which carries the official decisions of the court.

Simón Gregorio Paredes, as a member of a codification commission charged with revising the civil and civil procedure codes and the judiciary laws, drafted in 1888 an organic law for the judiciary⁴ for eventual presentation to Congress;

¹⁸ *El Peruano*, Apr. 14, 1971.

¹ Fuentes, Manuel Atanasio. *Formulario para los jueces de paz del Perú*. Lima, Impr. del Estado, 1873. 283 p.

² *Supremo tribunal de responsabilidad judicial [documentos sobre los cuestiones administrativas y judiciales que por él han sido tratados y resueltas en el primer año de su existencia]* Lima, 1877.

³ Ribeyro, Juan Antonio. *Anales judiciales del Perú*. Lima, Impr. Liberal de "El Correo del Perú," 1878. 287, xlvii p.

⁴ Paredes, Simón Gregorio. *Proyecto de ley orgánica del poder judicial y reglamento de tribunales del Perú*. Lima, Impr. del Universo, 1888. 82 p.

available sources, however, do not shed any light on the ultimate fate of this particular draft.

A series of articles critical of the judicial system as it existed in 1861 which also appeared in the first issues of the official organ of the Supreme Court, *Gaceta Judicial*, was published in pamphlet form in 1889 by Dr. Ramón Gutiérrez Paredes.⁵

Drs. Fuentes and de la Lama published an annotated work pertinent to the justice of the peace courts of 1861, the special commercial courts of 1864, and the 1854 Organic Law (Reglamento) for the Judiciary in general.⁶ Subsequently, Dr. de la Lama published several works on his own. He annotated in two editions⁷ the text of the 1854 Organic Law; the first edition covers all laws and executive enactments through March 31, 1897, and the second edition, through June 30, 1905. He also issued a new annotated edition of the Regulation on Justice of the Peace Courts,⁸ a monograph on the judicial system and practice before the bar,⁹ and another annotated work on the 1911 Organic Law of the Judiciary.¹⁰

The Law of 1912 was annotated by Judge Francisco José Eguiguren¹¹ in the same volume with the civil procedure code and the Law on Notaries which had been promulgated simultaneously.

Dr. Calle, another jurist, issued three editions of his annotated Regulation on Justice of the Peace Courts¹² in conjunction with related legislation and code provisions.

The history of the Supreme Court of Justice of Peru from its founding in 1825 by Simón Bolívar is the subject of a brochure published with official sanction by Alejandro Freundt y Rosell, a clerk of that court.¹³ A folded chart at the back shows the names of the justices and their terms of office for the period ending in 1923.

⁵ Gutiérrez Paredes, Ramón. *Abusos y reformas del poder judicial en todos sus grados*. Lima, Impr. del Universo, 1889. 62 p.

⁶ Fuentes, M. A., and Miguel Antonio de la Lama. *Reglamentos de tribunales de jueces de paz y comercio con notas y concordancias* . . . Lima, Impr. del Estado, 1870. 205, 80 p.

⁷ Lama, Miguel Antonio de la. *Reglamento de tribunales con citas, notas, concordancias, un apéndice* . . . Lima, Libr. é Impr. Gil, 1897. 479 p.; 2.ed. 1905. 532 p.

⁸ ———. *Reglamento de jueces de paz, concordado con el manual del juez de paz*. Lima, 1899.

⁹ ———. *Derecho judicial y práctica forense*. Lima, Libr. é Impr. Gil, 1902.

¹⁰ ———. *Ley Orgánica del Poder Judicial*. Lima, Libr. é Impr. Gil, 1912. 230 p.

¹¹ Eguiguren, Francisco José. *Ley Orgánica del Poder Judicial, Código de Procedimientos Civiles* . . . anotados y concordados . . . Lima, Sanmartí y Cía., 1914. 367 p.

¹² Calle, Juan José. *Reglamento de Jueces de Paz, anotado y concordado* . . . Lima, Gil, 1914. 381 p.; 2.ed. (?) 3.ed. 1923. 610 p.

¹³ Freundt y Rosell, Alejandro. *La corte suprema de la República desde su fundación*. Publicación oficial. Lima, Impr. Americana, 1923. 22 p.

In compliance with Bachelor of Law degree requirements at the University of Cuzco, J. M. Garrido Mendivil wrote a thesis about the office of government attorney, its nature and responsibilities.¹⁴ After becoming a professional, the same author issued monographic studies on the functions and organization of the superior courts of the Republic.¹⁵

Horacio Urteaga treats the fascinating subject of the judicial system of the Incas in an article which originally appeared in 1928 in the *Revista Histórica*, the organ of the Instituto Histórico del Perú, and which was published separately in the same year.¹⁶ The same article was later incorporated, with some changes, into a more extensive work by Urteaga dealing with the judicial process of the Spanish colonial regime.¹⁷

An unusual contribution from Fernando Luis Castro Agusti is an alphabetical digest of Supreme Court cases concerning administrative matters.¹⁸ This work covers such topics as the reassignment of cases in the event of a justice's illness, the duties of notaries, lawyers, and other court personnel, the forms to be used in briefs, and jurisdictional problems; it also includes the court's resolutions and nonjudicial decisions.

In 1925 two interesting monographs appeared: the first, by José Gálvez, discusses the history and development of the Supreme Court,¹⁹ and the second, by Luis Felipe Paz Soldán, represents a general study of the Peruvian administration of justice²⁰ beginning with the colonial period.

Within the same year two histories of the Superior Court of Arequipa were published on the occasion of the centenary of its creation. The first is the work of Rubén A. Bustamante Ugarte,²¹ and the second is by Santiago Martínez.²²

¹⁴ Garrido Mendivil, J. M. *Apuntes sobre el Ministerio público en el Perú*. Cuzco, Tip. Cornejo, 1927. 99 p.

¹⁵ ———. *La creación de cortes superiores en la República*. Tacna, 1935. 20 p.

———. *Creación de nuevas salas en algunas cortes superiores de la República*. Cuzco, H. G. Rozas Sucesores, Libr. é Impr., 1941. 11 p.

¹⁶ Urteaga, Horacio H. *La organización judicial en el imperio de los Incas, contribución al estudio del derecho peruano*. Lima, Libr. é Impr. Gil, 1928. 50 p.

¹⁷ ———. *La organización judicial en el imperio de los Incas y en la colonia, contribución al estudio del derecho peruano*. Lima, Libr. é Impr. Gil, 1938. 68 p.

¹⁸ Castro Agusti, Fernando Luis. *Jurisprudencia administrativa de la Corte Suprema de la República, 1905-28*. Lima, Impr. Cajamarca [1933] 27 p. (Poder judicial del Perú)

¹⁹ Gálvez, José. *Apuntes para la historia de nuestro más alto tribunal de justicia*. Lima, 1925.

²⁰ Paz Soldán, Luis Felipe. *La administración de justicia en el Perú*. Lima, Impr. del Asilo "Víctor Larco Herrera," 1925. 68 p.

²¹ Bustamante Ugarte, Rubén A. *La Corte Superior de Justicia de Arequipa (1825-1925)*. Arequipa, 1925. 254 p.

²² Martínez, Santiago. *Monografía de la Corte Superior de Arequipa, y apuntes biográficos de todos sus vocales y fiscales*. Arequipa, Tip. Caritg y Rivera, 1925. 234 p.

The latter includes a list of the superior court judges and government attorneys, with biographical sketches.

A monograph criticizing the existing judicial system and suggesting reforms for expediting the hearing of cases comes from the pen of Enrique Echeopar.²³

The subject of reforms is also dealt with in three other works by Dr. Guzmán Ferrer,²⁴ a judge of the Court of First Instance in Tarma; Castro Agusti,²⁵ a judge of the Superior Court of Cajamarca; and the Lima Bar Association.²⁶

A compilation of laws, code provisions, and forms for use in justice of the peace courts was edited by Dr. Eduardo García Calderón,²⁷ with citations to related provisions of law. A similar but less extensive work was contributed by Manuel León Soto y Macedo.²⁸

José Matías León published a critical study²⁹ briefly summarizing the historical development of the judicial power in Peru and discussing the threat to its independence occasioned by the dismissal of the incumbent justices of the Supreme Court following the revolution of 1930.

In 1937 a draft of a law on promotions and other aspects of the judicial profession was presented to the Supreme Court with an enlightening statement of purposes by Pedro Génaro Delgado,³⁰ who was then an incumbent judge in Arequipa.

Juan Bautista de Lavalle, former Supreme Court justice and diplomat, delivered an address³¹ at the opening session of the Superior Court of Lima in 1938 when he assumed the office of chief judge of that tribunal. Written in a philosophical vein, the address traces the legal trends of the preceding 25 years, citing specifically the changes introduced by the Civil Code of 1936 and its relation to the functions of trial-court and supreme-court jurists, and urges that greater initiatives and freedom be granted these functionaries.

²³ Echeopar, Enrique. *Justicia Inmediata*. Lima [Tip. Libr. Caballero é Hijos, 1928] 277 p.

²⁴ Guzmán Ferrer, Fernando. *Reforma del poder judicial*. Lima, Libr. é Impr. Gil, 1931. 80 p.

²⁵ Castro Agusti, Fernando Luis. *Reforma del poder judicial*. [Cajamarca?] Impr. Cajamarca, 1932. 21 p.

²⁶ *Anteproyecto de reforma del poder judicial y exposición de motivos*. Lima, Impr. Torres Aguirre, 1932. 37 p. (Colegio de Abogados de Lima)

²⁷ García Calderón, Eduardo. *Leyes, reglamentos, disposiciones de los códigos, resoluciones supremas y formularios para jueces de paz*. Lima, Libr. é Impr. Gil, 1935. 466 p.

²⁸ Soto y Macedo, Manuel León. *Reglamento de jueces de paz*. Lima, Tall. Gráf. de la Penitenciaría, 1934.

²⁹ León, José Matías. *1930 (La división del poder judicial)* Lima, 1936. 102 p.

³⁰ Delgado, Pedro Génaro. *Derecho de ascenso y derecho de ingreso a la carrera judicial*. Arequipa, Tip. Cuadros, 1937. 72 p.

³¹ Lavalle, Juan Bautista de. *La renovación del derecho peruano y la función judicial*. [Lima, 1938] 23 p.

A handbook for justices of the peace, printed in three editions,³² was issued by Felipe S. Guerra. Its four parts deal with elementary principles of procedure, the laws on the justices of the peace, oral suits, procedure in cases of misdemeanors and minor crimes. An appendix contains forms and tables, as well as laws on judicial costs and fees, registration, and stamp tax. The third edition appeared with the word "practical" added to its original title, *Manual for Justices of the Peace*.

In 1940 Oscar C. Barrós released a collection of autobiographical material, forensic and oratorical pieces, historical notes on the Supreme Court, press documents, and correspondence relative to his advocacy of the judiciary's autonomy.³³ When the 1930 revolution led by Luis Sánchez Cerro unseated the members of the Supreme Court, Barrós was on the bench. A lawyer and former legislator, cabinet officer, and chief justice of the Supreme Court, he was accused of unjustly enriching himself at the expense of the government but was later absolved of this charge.

The following year Dr. Barrós produced another work³⁴ describing the events leading up to his dismissal as chief justice and the removal of the other justices and requesting the Congress of 1941 to find a final solution to the matter. Presumably the Congress did not act favorably, because in 1944 Dr. Barrós wrote a third time on the same subject of his and his colleagues' dismissal, calling for their reinstatement.³⁵

The text of the 1912 Organic Law on the Judiciary as amended through 1942 was annotated by Dr. Aparicio y Gómez Sánchez,³⁶ producing an excellent reference tool. An extensive appendix contains the text of such related legislation as the 1936 Law on Internal Administration and Regulation of the Offices of the Supreme Court, laws on retirements and pensions in the judiciary, judicial fees, and costs.

As a law student at the Catholic University in Lima in 1943, Dr. García Rada wrote a scholarly thesis on Peru's judicial power.³⁷ The development of

³² Guerra, Felipe S. *Manual para jueces de paz*. Lima, Tall. Gráf. de la Penitenciaría, 1935; 2.ed., corr. y aum. 1938. 160 p.; 3.ed., reformada y ampliada. [1946?] 257 p. [Title varies]

³³ Barrós, Oscar C. *Por la justicia y por la patria. "Devolveremos al poder judicial su excelstitud."* Lima, Tall. de Linotipia, 1940. 445, vi p.

³⁴ ———. *El atropello contra la Corte Suprema en 1930 y su iminente solución por el Congreso de 1941*. Lima, Tall. de Linotipia, 1941. 68 p.

³⁵ ———. *¡Más allá del deber!* Lima, Tall. de Linotipia, 1944. 92 p.

³⁶ Aparicio y Gómez Sánchez, Germán. *Ley Orgánica del Poder Judicial. Concordancias*. Lima, Tall. de Linotipia, 1942. 294 p.

³⁷ García Rada, Domingo. *El Poder Judicial*. Lima, Tall. de la Edit. Atlántida, 1944. 247 p. [Thesis]

the system and the administration of justice among the Incas during the colonial regime and in republican Peru are the topics of the first three portions of the work. The fourth is devoted to the history of the Supreme Court, the fifth to the influence of the role played by the judicial profession, and the seventh and last part gives the text of some of the laws and documents cited in the main work.

In 1947 Félix Cosío treated briefly the subject of judicial reorganization, a topic long contemplated by Peruvian law revisionists and codifiers since the enactment in 1912 of Law 1510 concerning the judiciary.³⁸ The following year, Luis Quiñe Arista published his proposed draft of the new organic law for the judicial reorganization of Peru, together with commentaries and an explanatory statement of purposes.³⁹ Before the repeal of the 1912 Law in 1963 (*supra*) Andrés Espinoza Cordero was able to annotate it with methodical cross-references to related provisions in the codes, the laws, and the Constitution.⁴⁰

The decade of the fifties produced a few more source materials. Alcides F. Estrada dealt with juvenile courts and the jurisdictional questions and situations which have to be resolved with reference to juvenile offenders (under 18 years of age).⁴¹

The lowest court in the judicial hierarchy of Peru, the justice of the peace courts, became the subject of three more handbooks, all of which are detailed and updated with related code provisions and supplementary decrees or laws. That of Silviano Martínez G.⁴² and Enrique A. Cuentas Ormachea⁴³ were published earlier; the third, published in 1959,⁴⁴ is based on some of the works of Dr. Delgado whose works in other fields of law have been previously described.

³⁸ Cosío, Félix. *La reforma de la Ley Orgánica del Poder Judicial*. Huancayo, Empr. Edit. Huancayo, 1947. 11 p.

³⁹ Quiñe Arista, Luis. *La reforma de la organización judicial peruana*. Lima, Edit. Médica Peruana, 1948- v.

⁴⁰ Espinoza Cordero, Andrés. *Concordancias a la Ley Orgánica del Poder Judicial*. Arequipa, 1960. 143 p.

⁴¹ Estrada, Alcides F. *Jurisdicción especial de menores*. Prólogo del doctor Roberto F. Garmendia. Cuzco [Perú] 1951. 93 p.

⁴² Martínez G., Silviano. *Manual y reglamento de jueces de paz. Contiene también: principales disposiciones de los códigos: civil y procedimientos civiles, penal y de procedimientos penales, Ley orgánica del Poder Judicial, Constitución del Estado y otras leyes y disposiciones superiores en las cuales intervienen los jueces de paz. Formularios en lo civil y en lo penal*. Lima, Edit. Mercurio [195-?] 169 p.

⁴³ Cuentas Ormachea, Enrique A. *Manual para jueces de paz; concordado con las leyes vigentes y el proyecto del Código de Procedimiento Civil nuevo*. Puno, Tip. L. Camacho [1950] 277 p.; 2.ed. [1955] 330 p.

⁴⁴ *Manual reglamento y formulario de jueces de paz, comprende las cuestiones legales en materia civil y materia penal. Concordado con todos los códigos y últimas leyes en vigencia . . . Nueva edición a base de las obras del doctor Pedro Genaro Delgado*. Lima [Libr. Patria, 1959] 287 p.

In Peru, where there is a conflict between the Constitution and a legislative enactment, the former prevails. None would probably quarrel with this basic premise. However, unlike the United States, where the Supreme Court is undeniably the arbiter of constitutionality, in Peru the power of judicial review of the constitutionality of a law is far from being a well-settled rule. Luis A. Rávago Bustamante looks into this judicial power and constitutional question in an interesting article that appeared in 1958.⁴⁵ For a contemporary listing of special laws on the judiciary, one should consult J. V. Fajardo.⁴⁶

As usual, a list of law school theses, mostly from San Marcos University, is included here without analysis. These sources relate to, among other matters, certain aspects of court organization, judges' functions, needed reforms, and other questions covering the period from 1872 to 1937.⁴⁷ Concluding this chapter is a "judicial directory" ⁴⁸ indicating the actual locale of Peruvian judges and courts, from the Supreme Court down to the lowest court, and including notarial offices, law offices, and headquarters of the bar association, for use of those who might someday find themselves subject to Peru's judicial or legal processes.

⁴⁵ Rávago Bustamante, Luis A. *Revisión de la constitucionalidad de las leyes*. Lima [Edit. Para Todos] 1958. 99 p.

⁴⁶ Fajardo, Jesús Víctor, ed. *Leyes especiales del poder judicial*. [1.ed.?] [2.ed.] Lima, Edit. Mercurio [196-?] 236 [3] p.

⁴⁷ Velarde, Francisco E. *Necesidad de la organización del poder judicial por jurados*. Lima, 1868. [Thesis]

Alzamora, Wenceslao. *Sobre si la institución de los jurados de tribunales era preferible a la de los jueces permanentes*. Lima, 1872. [Thesis]

Moreno, José Elío. *Independencia del poder judicial*. Lima, 1872. [Thesis]

Araujo, Eliseo. *El poder judicial debe tener su fuente en la elección*. Lima, 1873. [Thesis]

Cabello, Gerardo. *El sistema de jurados es conveniente en el Perú*. Lima, 1875. [Thesis]

Giraldo, Santiago. *Los Jurados*. Lima, 1875. [Thesis]

Luna, Manuel Teófilo. *Los jueces deben ser directamente nombrados por la Nación*. Lima, 1878. [Thesis]

Pastor, José Cecilio. *El Poder Judicial*. Lima, 1878. [Thesis]

Burga Cisneros, Ezequiel. *Inamovilidad de los jueces*. Lima, 1879. [Thesis]

Luna, Segundo. *Inamovilidad del poder judicial*. Lima, 1879. [Thesis]

Villagarcía, Augusto. *Poder Judicial*. Lima, 1881. [Thesis]

Sánchez, Ezequiel. *Inconvenientes prácticos que presenta el nombramiento de los jueces por el poder ejecutivo*. Lima, 1887. [Thesis]

Zevallos, Germán D. *¿Deben o no ser inamoviles los jueces?* Lima, 1891. [Thesis]

Montenegro, Alfredo. *Organización del poder judicial*. Lima, 1897. [Thesis]

Maradiegue, Julián V. *Los Jueces*. Lima, 1901. [Thesis]

Alva, J. César. *Los jueces de paz deben ser letrados, asimilables por sus gozes y obligaciones a los de la instancia del fuero común*. Trujillo, 1912. 9 p. [Univ. de la Libertad]

Vieytes Ledesma, José. *La independencia de los jueces*. Lima, 1913. [Thesis]

Bustamante y Santisteban, Pedro. *Necesidad de establecer en el Perú una institución judicial defensora de indígenas*. Lima, 1916. [Thesis]

Grimaldos y Soto, Germán. *Reorganización de los juzgados de paz*. Lima, Impr. del Central Edit., 1917. 19 p.

- Tupiño Agüero, Manuel A. *Reformas en nuestra organización judicial*. Lima [Tip. El Progreso Edit.] 1918. 67 p.
- . *Nuestra organización judicial y sus reformas*. Lima, 1919. [Thesis]
- Barreda y Laos, Carlos. *Apuntes sobre la reforma judicial*. Lima, 1919. [Thesis]
- Alzamora, Isaac, Jr. *El jurado en el Perú*. Trujillo, Tip. Olaya, 1921. 12 p. [Univ. de la Libertad]
- Ramírez Villasante, Gustavo. *Notas y apuntes sobre la reorganización del poder judicial en el Perú*. Lima, 1925. [Thesis]
- San Cristóval, Evaristo. *La evolución de la justicia en el Perú*. Lima, 1925. [Thesis]
- Collazos Osore, Artemio. *El secretariado judicial en el Perú*. Lima, 1930. [Thesis]
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- Morales Gálvez, Elías. *Breves reformas de la Ley Orgánica del Poder Judicial*. Lima, 1931. [Thesis]
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- Zárate Jurado, Raúl. *Por la creación de tribunales ad-hoc en el Perú*. Lima, 1935. [Thesis]
- Arteta, Vicente. *El Secretariado Judicial*. Lima, 1936. [Thesis]
- Cisneros Durandean, Manuel. *El poder judicial en el Perú*. Lima, 1937. [Thesis]
- Luna Victoria, Ricardo. *Tribunales para Menores*. Lima, 1938. [Thesis]
- ⁴⁴ *Guía judicial de Lima*. Lima, 1959. 80 p.

Labor and Social Legislation

History and Texts

At the time of independence and for some years thereafter, Peru's labor matters were governed by the pertinent provisions in the old Spanish code, the *Novísima Recopilación de las Leyes de las Indias*, and mine workers by the provisions of the *Ordenanzas de Minería de Nueva España*, which were adopted for the viceroyalty of Peru in 1785. There were also scattered regulations concerning other special groups of workers.¹ Eventually as the need arose, regulations were adopted concerning agricultural, domestic, and other workers. However, it was not until the beginning of the 20th century that more sophisticated social legislation was initiated; it was also at this time that orderly compilations of laws in this field started.

One of the earliest and most enthusiastic exponents of the labor cause was José Matías Manzanilla, professor of law, author, and legislator. Commissioned by the government to draft urgently needed legislation on a broad range of subjects involving labor, he produced several drafts in 1905² covering the major concerns of a modern, labor-conscious society. Congressional study and consideration of Dr. Manzanilla's proposals took many years. His original theses and views were analyzed, debated, compared with foreign theories and laws,³ and weighed against other proposals and recommendations submitted by interested parties. As the nation became more industrialized, the legislators were concerned mainly with those proposals relating to work accidents and the employer's liability, better known as workmen's compensation in common law jurisdictions. Finally, on January 20, 1911, a law on this subject (Law 1378) was approved by Con-

¹ Belaúnde Guinassi, César. *Aporte colonial a la legislación del trabajo*. Lima [194-] 96 p.

² Manzanilla, José Matías. *Legislación del trabajo. Proyectos formulados por . . . comisionado por el supremo gobierno*. Lima. Impr. de El Comercio. 1905. 82 p.

³ *Accidentes del Trabajo*. Lima, Impr. de Revista, 1907. 207, lx p. (H. Cámara de Diputados)

gress. In 1913 an official edition of this law ⁴ was published with related regulations. In the ensuing years, Dr. Manzanilla's original drafts carried much weight and influence on the decisions and enactments of the Congress.

Several attempts have been made to codify Peru's labor legislation. In 1934 a draft code was offered by Manuel Bustamante de la Fuente,⁵ a member of the Congress from Arequipa. On the occasion of the First Peruvian Congress of Lawyers in 1940, Professor Ernesto Velázquez of the University of Arequipa presented another draft code.⁶ In 1941 an official commission was designated by Executive Order of September 15, 1941, to undertake the task of codification. Manuel Benigno Valdivia, an associate justice of the Supreme Court and labor advocate, was designated chairman. Another attempt, sometime in the fifties, produced a preliminary draft.⁷ In 1963 a labor commission was created specifically to produce a labor code. By law the final draft prepared by this commission was to become effective without need of executive or legislative confirmation. Despite these numerous attempts, no labor code as such exists in Peru today.

Labor legislation dating from the early 1900's to the present consists of basic laws and decrees which are constantly amended, supplemented, and sometimes repealed, either expressly or tacitly. Invariably judicial interpretation becomes necessary in determining the applicable law at a given time in a particular case. So far as it can be ascertained, some of the basic laws in force as of this writing include the following.

Law 4916 of February 27, 1924,⁸ which sets employment standards or conditions for government and commercial employees and provides for severance pay and other social benefits. This law has been amended heavily to date. The amending legislation, decrees, or resolutions may be found in many of the materials cited under this chapter's section on literature.

⁴ *Ley de accidentes del trabajo (reglamentado)*. Ed. oficial. Lima, Impr. Acción Popular, 1913. 60 p.

———. Lima, Orellana y Cía., 1926. 93 p.

English text in:

Workmen's Compensation Legislation of the Latin American Countries. Washington, Gov. Print. Off., 1930. p. 156-161. (Bulletin of the U.S. Bureau of Labor Statistics, no. 329)

⁵ Bustamante de la Fuente, Manuel. *Proyecto de código de trabajo formulado por . . .* Lima, Impr. Torres Aguirre, 1934. 134 p.

⁶ Velázquez, Ernesto. *Proyecto de código de trabajo*. Arequipa. Tip. Medina, 1940. 127 p.

⁷ *Anteproyecto del código de trabajo (Artículos adicionales)* Lima, Tall. Gráficos de la Penitenciaría Central, 1952. 50 p. (Ministerio de Trabajo y Asuntos Indígenas. Dirección General de Trabajo)

⁸ *Ley de empleo no. 4916 y sus ampliatorias no. 5066 y 5119. Reglamento de las precedentes leyes*. Lima, Tall. de El Tiempo [1928?] (Ministerio de Fomento. Legislación social)

Diez Canseco R., Manuel, and Abelardo Solís, eds. *La legislación del empleado. Proyecto de ley*. Lima, Empr. Edit. D.C., 1935. 19 p.

Law 8433 of August 12, 1936,⁹ governs social security for obreros (blue-collar or manual workers). An English source of all the amendments to this law as of 1968 may be found in an appendix to an excellent study prepared by the U.S. Department of Labor;¹⁰ in addition, however, some recent amendments respecting the compulsory social insurance provisions of Law 8433 have been adopted under Decree-Law 18982 of October 12, 1971.¹¹ The same decree-law institutes a social insurance scheme for salaried employees, amending in effect Law 13724 of November 18, 1961, the basic social security law for empleados (white-collar employees). This relatively new law established a separate and autonomous institution to administer the compulsory benefits for empleados.

Social security provisions for empleados¹² include benefits for illness, maternity, disability, old age, and death, which are substantially the same benefits extended to obreros.¹³ Coverage is extended to empleados who are public employees, private employees, or those enumerated in Law 4916 as such, including those not listed but who work for one or more employers in a subordinate relationship and are salaried, and members who decide to continue coverage after their compulsory status has ended. In the case of obreros, insured members are classified as either compulsory or optional as they are listed, described, or identified in the law. Examples of the compulsory class are apprentices, chauffeurs of private automobiles, port workers, and dockworkers. Examples of the optional category include government and other public employees.

The basic legislation relating to resolutions of labor disputes is a Supreme Decree dated April 16, 1941,¹⁴ which created the Labor Court. This decree

⁹ Ley no. 8433. Seguro social obligatorio. In *Anuario de la legislación peruana* (1936), p. 324-335.

¹⁰ Bartlett, Lynn M. *Labor Law and Practice in Peru*. Washington. U.S. Bureau of Labor Statistics, 1968. 76 p.

¹¹ *El Peruano*, Oct. 13, 1971.

¹² Mar, Juan Manuel del, ed. *Legislación del seguro social del empleado; corresponde a: todos los empleados públicos y particulares incluidos en los beneficios de las Leyes nos. 8435 o 4916 y sus ampliatorias* . . . [Lima, Libr. Las Américas, 1950] 53 p.

Cuerpo organizador del seguro social del empleado. Lima, 1951. 34 p.

Estatuto del seguro social del empleado; Ley no. 13724 los beneficios que el seguro otorga a todos los empleados públicos y particulares en general. Anexos: Ley de jubilación de empleados particulares; Ley 15132 referente a los profesionales al servicio de personas naturales y jurídicas; Ley de jubilación de mujeres al servicio del Estado. Lima, Edit. Mercurio [1967] 1975 p.

¹³ Martínez G., Silviano. *Beneficios sociales del obrero*. Lima, Libr. Distribuidora Bendezu, 1966. 150 p.

Martínez G., H., ed. *Derechos y beneficios sociales del obrero; legislación laboral*. Lima [Ediciones Hemisferio. 1967] 184 p.: 2.ed. [1968] 217 p. [Printer varies]

¹⁴ Decreto Supremo del abril 16 de 1941 que crea el Tribunal de Trabajo. In *Revista de legislación peruana*, Apr. 1941, p. 978-979.

was subsequently modified and implemented by Supreme Decree of July 5, 1941.¹⁵ These earlier decrees were given the force of law by legislative confirmation under Law 9483 of December 31, 1941. Subsequent enactments created inferior courts in some of the departments and provinces. Labor courts have jurisdiction in all matters arising from Peru's extensive industrial laws, employment contracts, the work safety and health areas, and various issues of compensation.

There are quite a few texts of the basic laws and related or complementary rules and regulations which altogether cover the broad range of social legislation: working hours, night work, overtime premium, paid leave, periodic rest day premium, holiday premium, minimum wage, supplemental payments, employers' contributions, pay period frequency, health and sanitation, employees' or workers' cooperatives, profit-sharing regimes, safety conditions and required precautions, accident and occupational disease compensation, record-keeping and reporting requirements on employers, employment contracts, hiring practices and guidelines, notice and separation period, labor unions, collective bargaining, conciliation and arbitration, and social security. They include both official and unofficial, annotated and unannotated editions, and also handbook-type publications covering the period from 1934 to 1966.¹⁶

¹⁵ Decreto Supremo de julio 5 de 1941, sobre el funcionamiento del juzgado privativo de trabajo. In *Revista de legislación peruana*, July 1941, p. 1176-1177.

¹⁶ Núñez Borja, Humberto. *Legislación Social Peruana*. Arequipa, Tip. Cuadros, 1934. 476, xiv p.

Ley del empleado, su reglamentación y ampliatorias, Ley del obrero, reglamentación de la Ley de accidentes del trabajo y Ley del trabajo de mujeres y menores . . . Lima, Guía Lascano [1934] 76 p.: 2.ed. [1938?] 124 p.: 3.ed. (?) 4.ed. [19—] 166 p.: 5.ed. (?) 6.ed. [194-] 206 p.; 7.-8.ed. (?) 9.ed. [1956?] 271 p.: 10.ed. [1957] 292 p.: 11.-12.ed. (?) 13.ed. 1962. 352, xxxiv p.

Legislación del trabajo. Recopilación completa de todas las disposiciones vigentes, debidamente anotada, clasificada y concordada. In *Revista mensual del comercio del Perú* (Lima) no. 173, Jan. 1937, 336 p.

Evans, E. Clinton, tr. *General legislation, supreme decrees, laws, resolutions, and regulations. Referring to employees and workers. Regulation of the work of women and minors*. Lima, Impr. Segrestán, 1937. 155, 151 p.

Delgado Bedoya, Manuel, ed. *Leyes del empleado, accidentes del trabajo . . .* Lima [Oficina Gráfica] 1937. 120 p.

Guardia Mayorga, César Augusto. *Manual de legislación obrera*. Arequipa [Edit. Bravo Mejía] 1938. 259 p.

Valega, J. M., ed. *Legislación del trabajo (concordadas) . . . Decretos supremos de reglamentación y de seguro social. Resoluciones supremas fundamentales*. Lima, D. Miranda [194-] 192 p.

Legislación sanitaria, laboral, alimenticia; leyes, decretos, reglamentos y resoluciones de carácter general, expedidas por el Ministerio de Salud Pública, Trabajo y Previsión Social. Lima, 1941. 264, viii p.

Venegas, José Ramón. *Leyes y disposiciones para la recaudación, distribución y empleo de las rentas prodesocupados . . .* [Lima, Edit. é Impr. J.L.C.] 1937. 89, iv p.: 2.ed. 1943. 324 p. (Comisión distribuidora de fondos pro-desocupados)

Samamé Pacheco, Benjamín, *ed. Prontuario de la legislación del trabajo*. [Lima, Compañía de Seguros Atlas, 1944] 116 [6] p.

Aspectos de la legislación social peruana, prontuario de la legislación del trabajo. Lima, Ministerio de Justicia y Trabajo, Dirección General de Trabajo, 1946. 46 p.

Palacios, José Miguel, *comp. Reglamentación del trabajo en los muelles de Callao. Tarifas por la manipulación de toda clase de carga y jornales a los trabajadores portuarios. Leyes, decretos y resoluciones supremas. Acuerdos y disposiciones de la Comisión Controladora del Trabajo Marítimo. Gremios o agrupaciones de trabajadores portuarios matriculadas*. [Lima] 1947. 143 p.; 2.ed. 1948. 179 p.

Prontuario de la jurisprudencia del trabajo. Lima, Tall. Gráf. de la Penitenciaría Central, 1949. 156 p. (Dirección General de Trabajo)

Cuadros E., Raúl. *Los derechos del empleado*. [Arequipa?] Ediciones Populares González Prada [1946?] 73 [1] p. (Divulgación de la ley, no. 1); [2.ed.] [cover 1950] 104 p.

Zegarra Garnica, Federico. *Resumen de la legislación del trabajo, conforme al Decreto supremo de 16 de noviembre de 1953*. [Puno] 1954. 49 p.

Negociación Colectiva. Lima, 1958. 179 p. (Ministerio de Trabajo y Asuntos Indígenas)

Llontop Amorós, Carlos. *Diccionario del trabajo: recopilación alfabética de la legislación jurisprudencia y otras disposiciones que rigen en materia de trabajo en el Perú*. Lima [1958] 101 p.

Martínez G., S., *ed. Manual y leyes del obrero; todas las leyes y reglamentos del obrero peruano en general . . .* Lima, Edit. Mercurio [1958?] 288 p.; ed. renovada. [1961] 267 p.

———. *Estatuto del seguro social del empleado, Ley No. 13724. Los beneficios que el seguro otorga a todos los empleados públicos y particulares en general . . . con las debidas anotaciones . . .* [1.ed.?] 2.ed. Lima [1963] 142 p.; another ed. [1966] 244 [5] p.

Fajardo, J. V., *ed. Código del trabajo y el sindicalismo, con la legislación social vigente del Perú*. Lima, Edit. Mercurio [196-] 300 p.

León de Izaguirre, Virginia. *Legislación del trabajo: la mujer trabajadora . . .* Lima, 1960. 33 p.

Principales disposiciones en materia de trabajo, 1963. (Ministerio de Trabajo y Asuntos Indígenas)

Velarde Morán, Ernesto A., *ed. Legislación y jurisprudencia laboral en el Perú; manual práctico de leyes, decretos, resoluciones vigentes sobre trabajo que atane a los empleados, obreros, e industriales*. Lima, Edit. Ayacucho [1961] 415 p.

Acción del gobierno en el campo laboral y indigenista, 1956-1962. Lima [1962] 149 p. (Ministerio de Trabajo y Asuntos Indígenas)

Acción del gobierno peruano en el campo laboral. [Lima] 1965. 79 p. (Ministerio de Trabajo y Asuntos Indígenas)

Sueldo Guevara, Rubén. *Reclamaciones colectivas de trabajo; (procedimiento) Compendio, sistematizado y al día, de las disposiciones legales referentes a pliegos de peticiones sobre aumento de salarios, condiciones laborales; reducción de personal, jornadas y paralizaciones de centros de trabajo, así como de todas las normas que en una u otra forma están relacionadas con las reclamaciones colectivas de trabajo*. Lima, Edit. Jurídica [1963] 68 p.

Díaz Barrios, Jorge, *ed. Compendio de leyes sociales*. [Arequipa] 1963. 388 p.

Dirección de Asesoría Técnica. *Principales disposiciones en materia de trabajo. Período: Enero-Mayo 1964*. Lima [Impr. E. Ilili] 1964. 154 p.

Flor Cúneo, Miguel de la. *Manual para calcular indemnizaciones y rentas de accidentados en el trabajo y enfermos profesionales*. [Lima] Escuela Sindical Autónoma de Lima [1964] 72 p.

Fajardo, Jesús Víctor. *Sindicalismo libre en el Perú; la realidad histórica del sindicalismo y algunas conquistas en la legislación laboral del Perú*. Lima, Edit. Mercurio [1965] 166 p.

Ley de estatuto y escalafón magisterial; ley de enseñanza gratuita no. 14693 y su reglamentación decreto supremo no. 70. Lima, Edit. Thesis, 1965. 76 p.

Rueda Sánchez, Gregorio, *ed. Estatuto y escalafón magisterial, Ley 15215; su reglamentación; Decreto supremo no. 29; concordancias y modificaciones*. [1.-3.ed.s.?] [4.ed., corr. y aum.] Lima, Edit. Thesis, 1965. 294 p.

———. *Legislación del empleado público; concordancias y modificatorias*. Lima [1965] 206 p.

Two agencies, the National Commission on Minimum Wages and the National Labor Council, perform significant functions in Peruvian labor affairs. The first, established in 1963, is responsible for preparing minimum wage studies and determining the areas which require corresponding readjustments; the second, a semiofficial body created in 1957, is charged with making recommendations to the Minister of Labor concerning labor problems and legislation.

Legislation in the work safety area dates back to the early 1900's, but that on social insurance and minimum wage is relatively new. The more recent innovations, however, relate to profit-sharing regimes and labor cooperatives. Law 15171 of October 9, 1964, as amended by Law 15260 (General Law on Cooperatives) on December 15, 1964, requires employers to make special contributions for the establishment and maintenance of cooperatives organized by labor union members. Law 11672 of December 31, 1951, establishes a scheme of profit-sharing. A new Law on the Industrial Community (Ley de Comunidad Industrial), promulgated under Decree-Law 18384 of September 1, 1970, and published two days later in the official gazette, amends or supersedes, insofar as industrial companies are concerned, the profit-sharing provisions of Law 11672. Pursuant to this new law, which was enacted pursuant to the General Law on Industries (see industrial and investment law under commercial law), all industrial companies are required to deduct annually a certain percentage from their new income for distribution to its full-time workers who are given the right to acquire a share in the equity of their companies, up to a maximum of 50 percent. In effect, the concept of industrial community operates to make the industrial workers co-owners and co-managers of their companies.

Although alien employment opportunities in Peru are quite limited,¹⁷ legislation to protect Peruvian labor in both white-collar and blue-collar categories is impressive. In fact, Peru's employment standards have been acknowledged as being even more comprehensive, progressive, and generous than those of many more developed nations, even though actual wages and salaries are comparatively lower.

Literature

Source materials on labor and social legislation have increased appreciably

Manual y leyes de obrero. Ed. renovada con los últimos dispositivos legales del seguro social obligatorio. Lima, Mercurio [1966?] 197 p.

González Rosales, Guillermo. *Salarios mínimos en el Perú.* Lima, Ministerio de Trabajo y Comunidades, Dirección General de Asesoría Técnica, Departamento de Compilación y Difusión, 1966. 246 p.

¹⁷ "Legal Restrictions on Employment of Aliens in the American Republics." In *Monthly Labor Review*, (Washington), December 1940.

during the last two decades. Because of this proliferation, the format of selection, description, and footnoting adopted in the chapter on civil law is being observed in this chapter. Normally, it would be advisable to divide the materials in two sections, labor law and social security. A study of the pertinent sources, however, shows the impracticality of this division inasmuch as both branches of social legislation, save in a few cases, are treated together in the same work.

The works of Dr. Manzanilla are among the earliest and most authoritative in the field.¹ It is unfortunate that no complete bibliography of his entire works is possible; copies of certain works are no longer available. Extant copies of his published works include the drafts earlier referred to on various aspects of social legislation and the parliamentary debates relative to them in which he was either a direct participant or was the subject thereof. Excerpts of these debates reflect the views and opinions of Peruvian legislators and other prominent authorities who either opposed or supported Dr. Manzanilla. To the serious researcher, these debates, together with Manzanilla's parliamentary speeches relating to labor questions, may provide part of the rationale or philosophy upon which Peru's labor laws were predicated.

As a law student, Dr. Miró Quesada, who became a member of Congress and another staunch supporter of labor legislation, chose labor law for both his bachelor's and doctoral degree theses from San Marcos University. Both works are comparative law studies² since Peru at the time had adopted little legislation of its own in this field. Another noteworthy thesis³ is that of Ricardo Rivadeneira, also of San Marcos University, who wrote on conflict of laws respecting the protection of foreign and domestic laborers against work accidents and compensation for injury or death. The work purports to criticize one of Dr. Manzanilla's opponents in Congress who contended that the foreign labor elements should not be protected on the same level as the nationals. Two other

¹ Manzanilla, José Matías. *Legislación del trabajo; proyectos formulados . . . comisionado por el supremo gobierno*. Lima, Impr. de El Comercio, 1905. 82 p.

———. *Legislación del trabajo, discursos parlamentarios*. 1.ed. [1919?] 2.ed. Lima, Impr. Malatesta-Rivas Berrío [1922?] 573 p.

———. *La responsabilidad por los accidentes del trabajo; discursos parlamentarios*. Lima [1913] 2.ed. [1919?] 3.ed. (?) 4.ed. Lima, Libr. é Impr. Gil, S.A., 1939. 419 p.

———. *La reglamentación del trabajo de la mujer y el niño. El descanso obligatorio. Discursos parlamentarios*. Lima, 1918; 2.ed. (?) 3.ed. (?) 4.ed. Lima, Impr. Lux de E. L. Castro, 1924. 131 p.; 5.ed. 1940. 366 p.

———. "El contrato de trabajo." In *Pan American Scientific Congress, I, Santiago, 1908-9. Trabajos*, (Santiago) 1911, v. 8. p. 92-101.

² Miró Quesada, Luis. *El contrato de trabajo*. Lima. E. Moreno. 1901. 63 p. [Thesis]

———. *Legislación del Trabajo*. Lima, 1905. 166 p. [Thesis]

³ Rivadeneira, Ricardo. *El derecho internacional privado en los accidentes del trabajo*. Lima, Sanmartí y Cía., 1909. 11 p. [Thesis]

law theses which merit special mention are those of Senator Ulloa, a statesman and authority in international law, whose university paper on labor law ⁴ demonstrates extensive research and use of many foreign and domestic authorities, and Dr. de Lavalle, a jurist and one-time president of the Lima Bar Association, whose thesis of 1918 ⁵ concerned women's and children's labor laws as of that year. A third thesis published much later on the subject of workmen's compensation may also prove useful.⁶

Dr. José M. Ramírez Gastón, a dedicated labor activist and successful lawyer, wrote a treatise on industrial legislation ⁷ in which he makes special reference to the legislative efforts of Drs. Manzanilla and Miró Quesada. Part of this work is devoted to reprinting the texts of drafted and approved labor legislation, particularly those pertaining to workmen's compensation. In 1966 ⁸ Dr. Ramírez Gastón published an account of his labor activities, including the major role he played in putting Law 4916 (*supra*) in the statute books, and his subsequent accomplishments and rewards. The publication includes pertinent documents, both legal and historical.

Dr. Angulo Puente Arnao issued a 1917 annotated compilation of laws,⁹ regulations, decrees, and code provisions on labor matters. Court decisions and other pertinent data on industrial and vocational schools are also included in this work.

In 1923 Julián Guillermo Romero, an alternate justice of the Supreme Court, contributed a monograph on labor employment contracts.¹⁰ A few years later, the joint annotated work of Mariano Echegaray and Ramón Silva¹¹ covering relevant administrative and legislative provisions made its appearance.

⁴ Ulloa y Sotomayor, Alberto. *La organización social y legal del trabajo en el Perú*. Lima, 1916. 242 p. [Thesis. Univ. Mayor de San Marcos]

⁵ Lavalle, Hernando de. "El trabajo de las mujeres y los niños en el Perú." In *Revista universitaria*, 3 trim., 1918, p. 242-259. [Thesis]

⁶ Haya de la Torre, Edmundo J. *Notas al margen de nuestras leyes y decretos sobre accidentes del trabajo*. Lima, 1930. [Thesis]

⁷ Ramírez Gastón, José M. *Legislación industrial del Perú*. Lima, Impr. del Estado, 1913. 315, v p.

⁸ ———. *Mi lucha por un ideal social; la Ley 4916 básica de la legislación social del empleado del Perú, primera en América y, la seguridad social*. [Lima, Edit. Litográfica La Confianza] 1966. 199 p.

⁹ Angulo Puente Arnao, Juan. *Legislación obrera anotada y concordada*. Lima, Lit. é Impr. T. Scheuch, 1917. 264 p.

¹⁰ Romero, Julián Guillermo. *El contrato de empleo*. Lima, Impr. Torres Aguirre, 1923.

¹¹ Echegaray, Mariano N., and Ramón Silva S. *Legislación del trabajo y previsión social; leyes, decretos y resoluciones concernientes al capital y el trabajo, disposiciones que favorecen al obrero, la mujer y el niño, ley del empleado, disposiciones que favorecen a los indígenas . . . comentada y anotada*. Lima, Impr. Torres Aguirre, 1925. 246 p.

From 1924 to 1929 several works involving Law 4916 appeared. Enrique Rávago Velarde issued a brief commentary¹² and later a legal compilation¹³ in honor of President Leguía who inspired the original basic law. Manuel M. Chávez Fernández compiled court decisions of arbitration cases,¹⁴ a collection which was later given a government imprimatur; in this work the compiler offers some recommendations for regulatory measures. Carlos Rodríguez Pastor published a comparative monograph on labor contracts, insurance, and arbitration.¹⁵

Dr. Aparicio y Gómez Sánchez, the noted scholar, also contributed to the literature on labor matters by annotating the individual provisions of the workmen's compensation law with historical antecedents and related legislation and case law;¹⁶ Dr. Manzanilla's extensive draft law of 1905 appears in an appendix to this work. Another distinguished scholar, Dr. Costa y Caverro, also issued annotated compilations¹⁷ of labor laws relating to both government and commercial employees¹⁸ as part of his Biblioteca de Obras Administrativas series; the precursor of today's National Council of Labor is treated in these volumes. Dr. Costa also dealt with the procedural aspects involved in handling labor complaints and other employment problems.¹⁹ In the mid-thirties, Dr. García Calderón contributed a similar compilation, annotated with correlative provisions from the civil, commercial, and mining codes.²⁰

¹² Rávago Velarde, Enrique. *Ley del empleado; texto de la Ley no. 4916 de 7 de febrero de 1924. Breve comentario* . . . [Lima] Peruvian Typography [1924?] 13 p.

¹³ ———. *Legislación del empleado dictada en el gobierno de don Augusto B. Leguía*. Lima, 1928. 43 p.

¹⁴ Chávez Fernández, Manuel M. *Jurisprudencia de la ley del empleado*. Lima, Impr. Americana, 1925. 165 p. (Legislación Social)

¹⁵ Rodríguez Pastor, Carlos. *Problemas Sociales Contemporáneas*. Lima. Impr. La Revista, 1929. 76 p.

¹⁶ Aparicio y Gómez Sánchez, Germán. *Ley de accidentes del trabajo. Concordancias*. Lima [Tall. Gráficos de la Penitenciaría] 1934. 298 p.

¹⁷ Costa y Caverro, Ramón. *Legislación del obrero. Leyes, decretos y resoluciones pertinentes. El consejo superior del trabajo y su funcionamiento*. Lima, Ofic. Tip. La Equitativa, 1936. 79 p. (Biblioteca de obras administrativas)

¹⁸ ———. *Legislación del empleado de comercio y del obrero*. Lima, Ofic. Tip. La Equitativa, 1937. 218 [8] p. (Biblioteca de obras administrativas)

———. *Manual de legislación del magisterio nacional del empleado público, anotado y concordado*. Lima, Impr. Americana, 1944- v. 1.

¹⁹ ———. *Manual de procedimientos en las leyes del empleado*. Lima, Impr. Gil.

———. *Los reclamos de trabajadores ante el Ministerio de Fomento*. Lima. Tip. La Equitativa, 1931.

²⁰ García Calderón, Eduardo. ed. *Leyes, decretos y resoluciones, empleados de comercio y obreros; concordados*. Lima, Libr. é Impr. Gil. S.A., 1935. 218 p. (Biblioteca jurídica de la Libr. é Impr. Gil. S.A.)

In the preparation of his work entitled *Las condiciones del trabajo en el Perú*, which unfortunately is not in the collections of the Library of Congress, Fernando Luis Chávez León did in-depth research in the field of labor law. In the absence of a codified body of laws, he devised his own legislative index file which later became the basis for his methodically arranged collection of social legislation.²¹ In this compilation he employs an elaborate research-facilitating system of comments, notes, and cross-references; an appendix contains the decisions of both labor and regular courts involving labor disputes.

The contract of services as regulated under the provisions of the civil and contract law, as well as the pertinent provisions of special labor legislation, is the subject of a well-documented study by Dr. Napoleón Valdez Tudela, law professor and labor court judge.²² In 1958 after a 44-year association with San Marcos University, both as student and professor, he wrote an excellent two-part treatise²³ on the subject. The first part presents the judicial, economic, and social evolution of labor law and the second part analyzes all statutory materials relating to both white-collar and blue-collar employees. Six years later he issued a very extensive annotated compilation of all provisions of law relative to employees.²⁴

Manuel Vigil's annotated work,²⁵ in its time perhaps the most complete of its type, initially appeared in 1937. In one volume, Dr. Vigil attempts, in effect, to codify under appropriate subject headings, the many laws, decrees, resolutions, and regulations affecting every conceivable aspect of employment, and provides extensive analytical notes and commentaries. Illustrative forms, court decisions in point, an analytical index-digest, a subject index, and a chronological list of laws make the work an invaluable reference tool. Enlarged and updated editions appeared in 1945 and 1951.

Jorge Ramírez Otárola, a lawyer who was active in the practice of labor law and had represented Peru in several international labor congresses, contributed a compilation²⁶ in which the laws are chronologically arranged with notes and

²¹ Chávez León, Fernando Luis. *Legislación social del Perú*. Lima, Empr. Edit. Rimac, S.A., 1937. 611 p.

²² Valdez Tudela, Napoleón. *La presentación de servicios en el derecho común y en el derecho del trabajo*. Lima [Sanmartí y Cía.] 1937. 78 p.

²³ ———. *Comentarios a la legislación social peruana*. Lima, Libr. é Impr. D. Miranda, 1958. 371 p.

²⁴ ———. *Legislación del empleado: leyes, reglamentos, decretos, resoluciones; textos, concordancias, dictámenes legislativos, comentarios, jurisprudencia*. Lima [Edit. Jurídica] 1964. 513 p.

²⁵ Vigil, Manuel A., ed. *Legislación del Trabajo*. Lima [Tall. Gráf. Hnos. Faura] 1937. 272 p.; another ed. 1945. 644 p.; another ed. 1951- v. [Printer varies]

²⁶ Ramírez Otárola, Jorge. *Legislación social peruana. Legislación crítica, reforma*. Lima, P. Barrantes Castro, 1937. 286 p.

cross-references, including detailed recommendations for codification and comparative law pointers. This compilation was published in 1937. In 1955²⁷ he published a work, equally as comprehensive as Dr. Vigil's, in which he employs extensive explanatory footnotes.

Two drafts of laws apparently by Bernardino León y León²⁸ and Luis Eche copar García²⁹ appear to warrant inclusion in this section. Although they are unavailable for examination, their titles suggest a coverage of jurisdictional questions on individual labor conflicts and collective labor disputes, respectively.

In partial fulfillment of the requirements for the degrees of bachelor of laws and doctor of laws, Alfonso Castañeda Rangel wrote two scholarly theses, one on rescission of labor contracts,³⁰ and the other on procedural laws³¹ with respect to labor litigations or arbitration and conciliation. In both works copious references are made to foreign law and practice as well as to Peruvian jurisprudence. Between the publication of these two impressive papers, the same author published another monograph³² treating of regional labor inspection practices.

Before the close of the forties, Luis F. de las Casas contributed a simple but useful pamphlet on minimum wage guidelines.³³ During that decade, two other important works appeared. Alberto Bolognesi Effio updated an original 1945 work on labor unions into a more comprehensive second edition³⁴ in which he discusses the theory and practice of Peruvian unionism. He provides historical and doctrinal materials, including his personal commentaries, and draws attention

²⁷ ———. *Codificación del trabajo y de previsión social del Perú*. Lima, 1955. 760, lxxv p.; 2.ed. 1963. 1098, xcvi p.

²⁸ León y León, Bernardino. *Proyecto sobre la organización jurisdiccional en materia de los conflictos individuales del trabajo*. Lima, n.d.

²⁹ Eche copar García, Luis. *Proyecto sobre organización jurisdiccional y procesal para solucionar los conflictos colectivos del trabajo*. Lima, 1940.

³⁰ Castañeda Rangel, Alfonso. *La rescisión del contrato de trabajo en la legislación del Perú*. Lima, Impr. El Condor. 1942. 255 p. [Thesis]

³¹ ———. *El derecho procesal del trabajo en el Perú*. Lima, Impr. El Condor. 1944. 211 p. [Thesis]

³² ———. *Las inspecciones regionales del trabajo en el Perú*. Lima, 1943.

³³ Casas, Luis F. de las. *Sueldos y salarios mínimos vitales. con el proyecto de ley de las juntas de salarios y sueldos mínimos vitales*. Lima, Impr. Anauta. 1947. 63 p.

³⁴ Bolognesi Effio, Alberto. *Teoría y táctica del sindicalismo moderno; nociones de historia, crítica, doctrina y organización sindical, problemas del campesinado mineros e informers del II Congreso de Empleados del Perú*. 2.ed., aum. y corr. Lima, 1947. 170 p.; 3.ed. 1955. 299 p. [1.ed. published as: Bolognesi Effio, Alberto. *Sindicalismo; apuntes de historia, crítica, doctrina y organización sindical*. Lima, 1945. 87 p.]

to the problems of minors and the papers of the Second Congress of Employees in Peru. The latest edition of the same work bears a 1955 imprint. Lastly, Ricardo Bustamante Cisneros, the eminent jurist, published three illustrative labor law cases decided in 1934, 1945, and 1948.³⁵

Among those who devoted their scholarship and expertise to the field of labor starting in the fifties up to the sixties include the following: Jorge M. Angulo Argomado, former dean of the faculty of law, political and social sciences of the National University of Trujillo, judge, and former regional labor inspector, published a manual which treats of labor contracts, vacation leaves, salaries and related matters such as profit sharing and salary safeguards, all regulations affecting both employees and workers, applicable indemnity rules, rights and special benefits or privileges of woman and child labor, workmen's compensation, social security, individual and collective bargaining, and social legislation enforcement.³⁶ The same author dealt with the procedural aspects of labor law. In 1960 he issued a monograph covering the sources of labor procedural law in which he includes pertinent definitions, general principles involved in the labor judicial process, an exposition on the nature and concept of labor disputes, and jurisdictional problems of labor and appellate courts. His excellent discourse on the pertinent laws and corresponding judicial interpretations, coupled with extensive comparative citations to foreign law, makes the work an important reference tool.³⁷ Ably complementing the foregoing works are a paper on labor contracts³⁸ and an invaluable labor case-law compilation³⁹ from the same pen.

Ricardo Elías y Aparicio, former Lima Bar Association president and minister of labor, and Guillermo González Rosales, a labor law scholar and former Ministry of Labor official who did extensive studies in the U.S. labor movement, published a joint work dealing not only with the national but international aspects of labor.⁴⁰ Consisting of four volumes, this major work deals with the standard subjects; its methodology, however, strictly follows that of the International Code

³⁵ Bustamante Cisneros, Ricardo. *Derecho social; jurisprudencia arbitral. Fallos de tribunales arbitrales*. Lima, 1949. 46 p.

³⁶ Angulo Argomado, Jorge M. *Manual de legislación del trabajo y previsión social*. Trujillo, 1954. 262 p. (Univ. Nacional de Trujillo. [Publicaciones] 5. Biblioteca Carlos Pedemonte y Talavera: Textos universitarios, no. 1); 2.ed. [1961] 334 p.

³⁷ ———. *El procedimiento del trabajo en el Perú; doctrina, legislación, jurisprudencia*. Trujillo, Perú [Gráfica Trujillo, 1960] 304 p.; 2.ed. [1964?] 360 p.

³⁸ ———. *El contrato de trabajo y la locación de servicios en el Código Civil Peruano*. Trujillo, Perú [1962?] 56 [4] p.

³⁹ ———. *La jurisprudencia del derecho laboral en el Perú*. Trujillo, Perú [1969?] v.

⁴⁰ Elías y Aparicio, Ricardo, and Guillermo González Rosales. *Doctrina y legislación del trabajo en el Perú*. [Lima] Biblioteca de Legislación y Jurisprudencia, 1959-62. 4 v.

of Labor. The third volume treats extensively of labor unions, strikes, collective bargaining, and conciliation and arbitration. The first and second volumes carry comprehensive "legislative bibliographies" covering the periods 1909-57 and 1913-59, respectively. An abridged and updated version of this multivolume work was issued by the joint authors in a 1961 single-volume publication.⁴¹

In 1954 Raúl Ferrero Rebagliati, together with Carlos Scudellari,⁴² issued a monographic study which is, in the words of the authors, aimed at commenting and expounding on the Peruvian labor system and at the same time comparing such system with that prevailing in Argentina, Brazil, Colombia, Chile, Mexico, and Uruguay. The following year, these joint authors issued an updated but condensed version of this study in pamphlet form.⁴³ In 1961 Dr. Ferrero published on his own a lecture he gave at San Marcos University dealing with the subject of labor contracts.⁴⁴ In the same year, he continued expounding on this subject, together with such related topics as the rights of the employee or worker, benefits to which he is entitled by law, his remuneration of emoluments, his participation in the profits of management, life insurance, domestic workers, labor unions, social security for both the employee and the worker, health benefits, and pensions. This last cited work has gone through six revised printings.⁴⁵

Jorge Rendón, who contributed an extensive handbook on the laws governing the fisherman (see industrial and investment legislation, commercial law), produced a similar work treating generally of the rights of the workers.⁴⁶ This work, which deals with substantive law, was supplemented later by another from the same pen but touching this time on procedural law,⁴⁷ specifically that which relates to individual labor complaints or disputes lodged with the corresponding labor tribunals.

Within the same period, several monographic items appeared. Carlos de

⁴¹ ———. *Síntesis de doctrina y legislación del trabajo en el Perú*. Lima, 1961. 190 p.; 2.ed., aum. y actualizada. 1962. 311 p.

⁴² Ferrero Rebagliati, Raúl, and Carlos Scudellari. *Legislación social del Perú y otros países de América Latina*. Lima, 1954. 141 p.

⁴³ ———. *El derecho del trabajo en el Perú. Estudio concordado de las normas sustantivas, tanto legales como reglamentarias y jurisprudenciales*. Lima, 1955. 96 p.

⁴⁴ Ferrero Rebagliati, Raúl. *El contrato de trabajo; conferencia dictada en la Universidad Nacional Mayor de San Marcos. Facultad de Derecho, el 2 de octubre de 1961*. Lima [1961?] 17 p.

⁴⁵ Ferrero Rebagliati, Raúl, and Carlos Scudellari. *Derecho de trabajo: sistematización*. Lima [Tip. Peruana] 1961. 123 p.; 2.ed. (?) 3.ed. (?) [4.ed.] 1962. 147 p.; 5.ed. (?) [6.ed.] 1966. 108 p. (Biblioteca del Derecho)

⁴⁶ Rendón, Jorge. *Derechos sociales del obrero*. Lima [Ediciones Simiente] 1963. 192, iv p.

⁴⁷ ———. *El procedimiento laboral en el Perú, reclamaciones individuales*. [2.ed.] Lima, Ediciones Tarpuy, 1965. 192 p.

Bonhomme Seymour Waden published the eighth volume of a series covering the labor laws of South America as a single-volume work,⁴⁸ since it deals specifically with Peruvian salaries and profit-sharing schemes. Guillermo González Rosales contributed an item dealing with the administration, application, or enforcement of labor laws.⁴⁹ Luis Felipe Barrientos Casós dealt with the general concept of freedom of association⁵⁰ in respect to unionism. In commemoration of the 50th anniversary of Peru's Work Accidents Law, Law 1378, Carlos E. Uceda Castañeda wrote on the occupational hazards of the professional⁵¹ as a tribute to the works of Dr. Luis Miró Quesada which he identifies as the legislation's forerunner. Melquíades Castillo published a pocket-sized manual on labor law in general.⁵² Manuel Morán Alva contributed a similar manual, which deals particularly with the social benefits accorded by law to the teaching profession.⁵³ Celso Becerra began what he hopes to be a series of works⁵⁴ involving both doctrinal and legislative materials respecting labor contracts.

The most recent source material located is rare from the standpoint of Peruvian practices and therefore important. The work by Julio César Barrenechea Calderón is a digest of court decisions as of 1969 in the field of labor law.⁵⁵

Lastly the researcher should refer to the legislative series published in English, French, and German by the International Labour Office⁵⁶ in Geneva. The series is a selection of the important labor and social security legislation of the countries of the world issued in bimonthly installments with notes on repeal or amendments of texts.

⁴⁸ Bonhomme Seymour Waden. Carlos de. *Salario y participación en las utilidades, de acuerdo con la doctrina, con la ley y con la jurisprudencia*. Arequipa. Edit. Chachani [1950] 346 p. (Colección: Derecho del trabajo en América del Sur, t.8: Perú)

⁴⁹ González Rosales. Guillermo. *Administración de la legislación del trabajo*. Lima, 1953. 128 p.

⁵⁰ Barrientos Casós. Luis Felipe. *Los tres sindicalismos: sindicalismo proletario, sindicalismo patronal, sindicalismo político*. [Lima] Ediciones Continente [cover 1958] 237 p.

⁵¹ Uceda Castañeda. Carlos E. *La teoría del riesgo profesional y su aplicación en el Perú*. Lima, Ediciones C.E.U.C., 1959. 187 p.

⁵² Castillo. Melquíades. *Derecho del Trabajo*. Lima. 1961. 123 p.

⁵³ Morán Alva, Manuel. *Goces y beneficios magisteriales*. Lima [1961] 231 p.

⁵⁴ Becerra, Celso. *Teoría y legislación de los contratos de trabajo*. [Lima] Edit. A. Lulli, 1961- v. (1)

⁵⁵ Barrenechea Calderón, Julio César. *comp. Jurisprudencia Laboral*. Lima [Edit. Universitaria] 1969. 543 p.

⁵⁶ International Labour Office. *Legislative Series, 1919-* Geneva, Switzerland [London] Harrison and sons, printers, 1919- v.

Military Law

Until the beginning of the 20th century, Peruvian military law and justice were based on old Spanish laws and ordinances which had long been discarded by Spain itself.

Peru is divided geographically into five military zones (see administrative law). A zone commander (jefe de zona), usually a general, heads the army units in each zone, and within this jurisdictional sphere he oversees the administration of justice in martial matters.

Peruvian history clearly reflects the major role that the Ministry of War, or its equivalent, plays in the internal affairs of the country. After the proclamation of independence, this ministry was one of the first cabinet offices created by General San Martín under a decree of August 3, 1821.

Most of the provisions of the Constitution of 1933, although still in force, are currently inoperative insofar as the control of the military is concerned. Under the present regime, the president is the de facto commander in chief of the armed forces with a chain of command extending directly from him to the commanders of the three branches of the armed forces who are, at the same time, the cabinet ministers of their respective services and are also members of the revolutionary junta which controls the government.

The jurisdiction of and procedure in courts-martial, including other technical aspects of military justice are detailed in the Code of Military Justice. The first such code, promulgated by President Piérola in 1898,¹ was the result of several attempts over a period of many years to draft domestic legislation. This original code remained in force until October 16, 1939,² when a new code was adopted.

¹ *Código de Justicia Militar del Perú*. Ed. oficial. Lima, Ofic. Tip. de El Tiempo, 1899. 211. viii p.: 2.ed. 1934. 351 p. (Ministerio de Guerra) [Printer varies]

² Ley no. 8991 promulgando el nuevo Código de Justicia Militar, y derogando el anterior código, las leyes nos. 272, 273, y 2442 y los decretos-leyes nos. 6881, 6882, y 7085 . . . In *Anuario de legislación peruana* (1939) p. 333-341.

Código de Justicia Militar. Ley no. 8991 de 16 de octubre de 1939. Lima, 1946. 183, vii p. (Ministerio de Guerra)

Eleven years later another code was adopted under Decree-Law 11380 of May 29, 1950, as ratified by Law 11490 of September 1, 1950.³ Complaints that this latest code did not totally eliminate the anachronistic and inadequate provision of the previous codes brought on the promulgation of Decree-Law 14613 of July 25, 1963,⁴ embodying the new Code of Military Justice. Except for some amendments,⁵ the 1963 code has remained in force.

Texts of the old military conscription laws and corresponding regulations may be found in a variety of materials indicated below.⁶

The law presently in force covering military service is Decree-Law on Obligatory Military Service (Decree-Law 10967 of March 2, 1949),⁷ which has been recently amended by Decree-Law 18946 of August 31, 1971.⁸ The latter decree-law amends section a of article 126 of the former relating to draft dodgers. As the title of the basic military conscription law clearly indicates, military service in Peru is obligatory or compulsory in both war and peacetime. The army is in charge of the conscription system. Priorities on who is called up first are determined by regional lottery. All Peruvians are subject to the draft, and unlike the United States, where alien permanent residents are subject to the draft, all aliens in Peru are exempt.

Early compilations of military law procedure and pertinent army regulations were published in 1857⁹ (apparently a reprint of an 1850 collection), 1858,¹⁰ 1878,¹¹ and 1905.¹² The 1905 compilation is a comprehensive series consisting

³ *Código de Justicia Militar: Decreto-ley no. 11380 de 29 de mayo de 1950 ratificado por la Ley 11490 de 1º de setiembre de 1950.* Lima. 1950. 190 p. (Ministerio de Guerra)

⁴ *El Peruano*, Aug. 28, 1963.

⁵ Decree-Law 18978 of Sept. 27, 1971. In *El Peruano*, Sept. 28, 1971.

⁶ *Ley de Servicio Militar Obligatorio y disposiciones para su cumplimiento.* Lima, Tall. Tip. El Siglo, 1905. 66 p.

Ley de Servicio Militar Obligatorio. Ed. oficial. Lima. Impr. Americana, 1913. 31 p.

Reglamento de la Ley de Servicio Militar Obligatorio. Ed. oficial. Lima. Impr. Americana. 1915. 50 p.

Servicio Militar Obligatorio. Ley no. 1569 y Ley no. 1630, complementando la anterior. Lima, Orellana y Ca.. 1923. 28 p.

⁷ *Ley del Servicio Militar Obligatorio (Decreto-Ley 10967, . . .)* [Lima] 1949. 1 v.

⁸ *El Peruano*, Aug. 31, 1971.

⁹ *Legislación administrativa en el ramo de guerra y marina desde 1823 a 1857.* Reimpresión de la "Colección de las leyes, etc.." de 1850. Lima. Impr. del Estado por El Aranda, 1857. 272 p.

¹⁰ *Colección de las leyes, decretos, y resoluciones más importantes en el ramo de guerra y marina. 1823-56.* [Lima? 1858?] 272 p.

¹¹ *Ordenanzas generales para el régimen, disciplina y servicio del ejército del Perú.* Lima, Impr. de J. F. Solís, 1878. 2 v.

¹² *Legislación militar; colección de leyes, decretos, resoluciones y reglamentos de los ramos de guerra y marina.* Ed. oficial. Lima, 1905-21. 14 v.; 2.ed. 1908-20. 12 v.

of 14 volumes published through 1921, followed by a second edition printing of 12 volumes through 1920.

Other contributions to legal literature in this field include commentaries, annotated texts of the code of the laws, and practice manuals.

The work by Raúl Fernández García¹³ consists of an annotated collection of laws, decrees, military decisions, and executive orders complementing and supplementing the provisions of the 1898 Code of Military Justice. This work was updated in 1930.¹⁴

José Luis Bustamante i Rivero, president of Peru in the 1920's, issued an official commentary on the first, third, and fourth books of the 1898 code.¹⁵

While in Argentina as Peru's military attaché, José Ricardo Luna studied the Argentine system of military law and administration of justice and subsequently presented a comparative study of his findings to the Peruvian minister of war.¹⁶

César F. del Risco treats the administrative aspects of military law in an annotated collection which includes comments on military pensions as well as civil service pensions. The laws, regulations, decrees, and supreme resolutions in this work cover a span of 87 years, from 1850 to 1937.¹⁷

In 1940 Ernesto Velázquez did an excellent study on courts-martial, courts of inquiry, infractions of military law, and relevant procedural laws.¹⁸ A few years later this study was supplemented or complemented by Francisco V. Ortega Benítes' manual of legal forms and related data designed for use in courts-martial and courts of inquiry.¹⁹

As expected, the Ministry of War has contributed much in the military law

¹³ Fernández García, Raúl. *Complemento del Código de Justicia Militar*. Lima. Sanmartí y Cía., 1916. 296 p.

¹⁴ ———. *comp. Jurisprudencia de la justicia militar*. Lima. Empr. Edit. Cervantes. 1930. 248, v p.

¹⁵ Bustamante i Rivero, José Luis. *Organización y procedimientos de la justicia militar en el Perú*. Lima. Impr. del Estado Mayor General del Ejército. 1920. 238 p.

¹⁶ Luna, José Ricardo. *Estudio de legislación militar presentado al señor Ministro de Guerra*. Lima. Impr. del Estado Mayor General del Ejército. 1923. 94 p.

¹⁷ Risco, César F. del. *Leyes, reglamentos, decretos y resoluciones supremas, dictadas para los institutos armados, empleados públicos, de municipalidades, beneficencias, compañías fiscalizadas y terminal marítimo, años 1850 a 1937*. Chorrillos. Impr. de la Escuela Militar. 1937. 211 p.

¹⁸ Velázquez, Ernesto. *Organización y procedimientos de la justicia militar en el Perú*. Arequipa. Tip. Acosta. 1940. 193 p.

¹⁹ Ortega Benítes, Francisco V. *Manual de práctica procesal en materia en justicia militar*. La Punta. Tall. Tip. de la Esc. Naval del Perú. 1945. 210 p.

field. Among its contributions are a formbook²⁰ and a biennial publication, called *Anales*, on the administration of justice in military and naval affairs.²¹ The latter was published to cover military court cases heard and decided since 1899, following the adoption of the 1898 code; the first four volumes published in 1907 cover the years through 1906; and a fifth volume published in 1929 updates the materials through 1912. Apparently, the series has since ceased publication.

The 1950 Code of Military Justice is the subject of two annotated works—one by J. V. Fajardo,²² and the other, by Herbert Freyre, jointly with Ricardo Nugent.²³ Both contain cross-references to related legislation as well as the sources of the code's provisions. The main distinction between the two is that Fajardo limits his notes to domestic laws and Freyre deals with similar laws in Italy, Spain, Mexico, Argentina, Brazil, and Chile, plus the Code of Private International Law of the Latin American countries. The contents of the appendixes to both works are quite similar.

Bibliographical sources of the Library of Congress show the existence of a number of assorted materials, including a 1967 work by F. Bonilla. Although unavailable for examination as of this writing, they are listed below in the usual chronological sequence.²⁴

²⁰ *Formulario de los procedimientos de justicia militar*. Publicación oficial. Lima, Tip. El Lucero, 1908. 290 p.

²¹ *Anales de justicia militar [1899-]* Lima, 1907-29 (?)

²² Fajardo, J. V. *Código de Justicia Militar; Decreto-Ley no. 11380, ratificado por Ley no. 11490, anotado y concordado*. [1.ed.?] [2.ed. ann. Lima] Edit. Mercurio [195-?] 331 p.

²³ Freyre, Herbert, and Ricardo Nugent, eds. *Código de Justicia Militar. Decreto-Ley no. 11380 de 29 de mayo de 1950, ratificando por la Ley 11490 de 1° de setiembre de 1950* . . . Lima, Impr. del S. de P. y P.T. de la Policía, 1952. 293 [3] 36 p.

²⁴ *Ley de Situación Militar*. Ed. oficial. Lima, Impr. y Libr. de San Pedro, 1915. 16 p.

Situación militar; ley, reglamento y decreto señalando los empleos que corresponden a la actividad y disponibilidad. Lima, Impr. del Estado Mayor General del Ejército, 1915. 38 p. (Ministerio de Guerra y Marina)

Memoria. 18-1918. Lima. v. (Ministerio de Guerra y Marina)

Comisión Reformadora del Código de Justicia Militar y Naval. *Proyecto de código de justicia militar y naval del Perú, presentado por la comisión nombrada por Decreto supremo de 18 de mayo de 1926* . . . Lima, Impr. Americana, 1929- v.

Organización, administración y legislación militar; recopilación, ordenada del cuestionario para pruebas escritas del concurso de capitanes. Contiene las siguientes materias: Leyes de ascensos. Ley de Situación Militar. Ley de Servicio Militar Obligatorio. Ley Orgánica del Ejército. Organización general de la nación para el tiempo de guerra. Ley de Requisiciones y Suministros. Reglamento del Estado Mayor General del Ejército. Cuarteles generales divisionarios y servicio territorial. Reglamento provisional para los estados mayores en campaña. Código de Justicia Militar. [Lima] 1935. 184 p.

Briceno S., S., ed. *Prontuario de legislación civil y militar; leyes, decretos supremos y resoluciones. Sobre jubilación, cesantía y montepío civil, que comprende a los empleados civiles y demás funcionarios que prestan servicios en las oficinas públicas del estado y aún en las instituciones fiscalizadas. Retiro del servicio activo, por límite de edad y pensión*

militar, que comprende a los miembros de los institutos armados del ejército, marina, aviación, guardia civil, policía y demás funcionarios asimilados a los ramos de guerra y gobierno. Recopilación completa . . . ampliamente revisada por los Ministros de Justicia, Gobierno y Guerra. Lima [Empr. Edit. Rimac. S.A.] 1942. 198 p.

Bonilla, F., *ed. Ley Orgánica y Código de Justicia Militar.* Lima, Edit. Mercurio, 1967. 209 [11] p.

Public International Law

Peruvian contributions to source materials on public international law and relations may be said to be adequate in proportion to Peru's entire output of legal literature. Even with the omission of works relating to boundary controversies, treaties, and territorial waters into which this chapter is subdivided, and the reduction to a minimum of the items of periodical literature and law school theses, Peru can still count on a substantial number of materials in the form of treatises and monographs on public international law.

To avoid including the same work under two different chapters, those works covering both public and private international law will be incorporated in this chapter whenever the work deals preponderantly with public international law.

One of the earliest items in this category by a Peruvian author was published in Spain and in Chile by José María Pando.¹ It was followed closely by a text written and published in two editions by Dr. Silva Santistéban,² whose works in other major fields of law have been described in previous chapters of this guide. Both of these items relate to classical international law principles applied in times of peace and war.

The last volume of Manuel Atanasio Fuentes' legal encyclopedia³ deals in an expository style with public and private international law doctrines and diplomacy in general.

An interesting thesis on international law in peace and in war, including the subject of the rights of neutrals, was presented at San Marcos University by Camille Pradier-Fodéré,⁴ son of the French authority, Paul Louis Ernest Pradier-

¹ Pando, José María. *Elementos de derecho internacional, obra póstuma*. Madrid, Alegría y Charlain, 1843. 700 p.; 2.ed. 1852. 700 p. [Place of publication varies]

² Silva Santistéban, José. *Curso de derecho internacional o de gentes*. Lima, 1858; 2.ed. 1864. 214 p. [Printer varies]

³ Fuentes, Manuel Atanasio. *Curso de enciclopedia del derecho*. Lima, Impr. del Estado, 1876. [v. III: Derecho Internacional]

⁴ Pradier-Fodéré, Camille. *De los derechos y deberes de las naciones en tiempo de paz, en tiempo de guerra y en el estado de neutralidad*. Lima, Impr. del Estado, 1877. 240 p.

Fodéré, who resided in Peru for many years.

Carlos Wiese's two studies in this field warrant inclusion. The first concerns rules of international law as applied during civil wars.⁵ It was eventually translated into French.⁶ The second is a compilation of legislation on the use of plebiscites in international law.⁷ A collection of treaties was also edited by Dr. Wiese (*infra*).

Dr. Elmore, who was recognized for his excellent treatise on the commercial laws of Peru and was a minister of foreign relations before becoming Supreme Court chief justice, issued a brief monograph dealing with national sovereignty, the restrictions imposed upon it by other nations, and international intervention.⁸ Originally published in 1882 in an Ecuadorean journal, it was reprinted in its present form at the time of the U.S. reaffirmation of its Monroe Doctrine.

A collection of correspondence and other communications and documents concerning the severance of diplomatic relations with Germany during World War I appeared contemporaneously, apparently as a government information bulletin.⁹

The same topic is treated in Juan Bautista de Lavalle's work¹⁰ published in France while the author was there as a member of Peru's diplomatic service. His law school thesis also deals with some phases of international law, and the history and application of the doctrine of *uti possidetis* (*infra*),¹¹ which Peru adopted in 1810 as a standard for settling jurisdictional questions in her boundary disputes.

The international relations and policies formulated during the incumbency of Melitón Porras as minister of foreign relations are discussed in a biographical work by Dr. Paz Soldán.¹² These policies relate to the various boundary controversies and the first European war.

⁵ Wiese, Carlos. *Reglas de derecho internacional aplicable a las guerras civiles*. Lima, 1893. 372 p.; 2.ed., corr. y aum. 1905. 390 p.

⁶ ———. *Le droit international appliqué aux guerres civiles*. Lausanne, B. Benda, 1898. 277 p.

⁷ ———. *Recopilación de leyes, decretos y reglamentos expedidos en los tiempos para la votación de los plebiscitos de derecho público*. Lima, Impr. La Opinión Nacional, 1906. 351 p.

⁸ Elmore, Alberto A. *Ensayo sobre la doctrina de la intervención internacional*. Lima, Impr. de El Comercio, 1896. 52 p.

⁹ *Ruptura de relaciones diplomáticas con el gobierno imperial de Alemania*. Lima, Impr. Americana, 1918. 140 p.

¹⁰ Lavalle, Juan Bautista de. *Las negociaciones de Berlín y la ruptura con el gobierno imperial alemán*. Lausanne, Impr. Réunies, S.A., 1920.

¹¹ ———. *Bosquejo del concepto y de las aplicaciones del uti possidetis en el derecho internacional americano*. Lima, 1909.

¹² Paz Soldán, Juan Pedro. *El canciller Porras y sus doctrinas internacionales*. Lima, Libr. é Impr. Gil, 1920. 98 p. (Las grandes personalidades del Perú)

Francisco Tudela, another former foreign minister and diplomat, takes a critical view of President Leguía's foreign policies in a paper published in France.¹³ The particular point at issue concerns the dispute and plebiscite involving the Tacna-Arica region.

Attention should be drawn to the constant endeavors of the father of the civil code and distinguished internationalist, Dr. Maúrtua, to codify the international laws of the American nations. His death in 1939 was a great loss to the cause of codification. It cannot be denied that in his lifetime he contributed immensely to this cause with his vast number of articles in foreign and domestic periodicals, his papers and addresses delivered at the various international and inter-American conferences, and his recommendations and resolutions at these meetings. Among his works which were examined are a few relating to international conciliation and arbitration procedures. One treats specifically of these subjects within the context of the Havana conference of 1928 and the Washington conference of 1929.¹⁴ Another includes his study with that of James Brown Scott and Jean Efremoff showing new trends in international arbitration and proposing draft legislation in point.¹⁵ Dr. Maúrtua also contributed an interesting paper in both Spanish¹⁶ and English¹⁷ concerning the liability of nations for injuries to persons or property of aliens in their jurisdiction. The Spanish paper was originally presented by the author at the Havana Academy of International Law on November 6, 1929. In 1940 many of his papers, resolutions, recommendations, draft laws, and articles were collected in a commemorative posthumous edition,¹⁸ the prologue to which was written by the late James Brown Scott.

An author with prodigious writings in this particular branch of law is Dr. Ulloa y Sotomayor, legislator, law professor, and Peruvian ambassador to the United Nations in the late forties. The first volume of his comprehensive treatise

¹³ Tudela, Francisco. *La política internacional y la dictadura de don Augusto Leguía*. [Paris, Impr. Omnés et cie.] 1925. 26 p.

¹⁴ Maúrtua, Víctor M. *Intervención-conciliación-arbitraje en las conferencias de la Habana, 1928, y Washington, 1929*. La Habana, Impr. Molima y Cía. [1929?] 196 p.

¹⁵ ———. *Nouvelles tendances de la conciliation internationale; projets de Víctor M. Maúrtua, James Brown Scott, Jean Efremoff*. Paris, Publications de la Conciliation Internationale [1933]. 204 p.

¹⁶ ———. *Responsabilidad de los estados é indemnización de perjuicios*. Buenos Aires. Autología Jurídica, 1932. 29 p.

¹⁷ ———. *Responsibility of states for damages caused in their territory to the person or property of foreigners*. New York. Oxford University Press. 1930. 67 p. (Published by the American Institute of International Law)

¹⁸ ———. *Páginas diplomáticas. I. La codificación americana del derecho internacional*. Lima, Libr. é Impr. Gil, S.A., 1940. 576 p.

on public international law appeared in 1926, followed by a second volume three years later.¹⁹ A second edition of the first volume was published in 1938, but the second volume of this edition, so far as can be ascertained, was never published. Covering all aspects of foreign affairs, these editions were intended for use as texts in his courses at the University of Lima. The first volume is of an introductory nature, devoted primarily to a discussion of the elements of international law, its origins, source materials, rules of law, and historical development. The numerous inter-American conferences, congresses, and other regional associations, treaties, and the use of arbitration are among the topics covered in the second volume. Among his particularly noteworthy articles, small pamphlets, treatises, and monographs is his paper dealing with the global problems as of 1928 vis-à-vis the League of Nations.²⁰ This is one of a series of three transnational studies of which the first two deal with Woodrow Wilson and the Monroe Doctrine. Another contribution is a two-volume work on hemispheric international law, both private and public, as developed at inter-American conferences held in Lima²¹ between 1847 and 1879. All relevant correspondence and documents in the Peruvian archives are reproduced in this work, and the author's 187-page prologue is informative. He also published a compilation of his erudite opinions²² rendered between 1934 and 1940 while he was legal adviser to the Ministry of Foreign Relations. In an exhaustive treatise on the modern trends of public law as applied to Peruvian policies and relations,²³ he defined Peru's status in relation to her neighbors on the continent and touched upon some of the more controversial relations she has had with other countries, tracing in the process the development of policies and doctrines from earlier times. Other works by him include a monograph on the final stages of the Peru-Ecuadorean boundary dispute leading to the Rio de Janeiro Protocol of the forties (*infra*),²⁴ and two succinct studies on the relations of Peru with the world²⁵ and with Japan,²⁶ both published in 1943.

¹⁹ Ulloa y Sotomayor, Alberto. *Derecho Internacional Público*. Lima. Sanmartí y Cía., 1926-29. 2 v.; 2.ed. 1938. 1 v.

²⁰ ———. *La Liga de las Naciones y los grandes problemas de la política universal*. Lima, Sanmartí y Cía., 1928. 23 p. (Estudios de derecho internacional III.)

²¹ ———. *Congresos americanos de Lima*. Lima, Impr. Torres Aguirre, 1938. 2 v. (Discursos y Conferencias. IV.)

²² ———. *Informes del asesor jurídico*. Lima. Impr. Torres Aguirre, 1941. 601 p.

²³ ———. *Posición internacional del Perú*. Lima, Impr. Torres Aguirre, 1941. 404 p.

²⁴ ———. *Perú y Ecuador. Última etapa del problema de límites (1941-42)*. Lima, Impr. Torres Aguirre, 1942. 117 p.

²⁵ ———. *El Perú y el mundo*. Lima, Edit. Relieves Americanos, 1943. 14 p.

²⁶ ———. *Perú y Japón*. Lima, Impr. Torres Aguirre, 1943. 26 p. (Para la historia internacional del Perú. II)

The doctrine of *uti possidetis* earlier referred to is again treated by Benigno Checa Drouet in a monograph of 1936.²⁷ Generally under international law the doctrine signifies the agreement of some nations to retain possession of what they have acquired by force during a war, as opposed to the principle of *status quo ante bellum*—the revision to pre-war conditions. As applied to Peru and other nations in this work, the doctrine concerns the agreement they had subscribed to in 1810, pursuant to which boundary disputes must be settled according to the boundary lines established during the Spanish régime. Dr. Checa's study represents the first in a series of which the second work²⁸ concerns modern theories on national sovereignty, and the third,²⁹ the defense of peace. Both of these last two contain prologues by the eminent Cuban internationalist Dr. Bustamante.

The compilation of war and emergency legislation is deemed pertinent to this chapter since it affects in many ways the application of principles of international law. Published officially by Peru's foreign office in 1941,³⁰ the compilation includes laws concerning Peru's declaration of neutrality, restrictions on sea vessels, asylum, alien property, enemy submarines in territorial waters, and an appendix which contains the texts of various international conventions and agreements in point.

The foreign policies favored by Carlos Sayán Alvarez, at one time presiding officer of Peru's Chamber of Deputies, are found in a collection of his official addresses and declarations issued in 1943 as the sixth in a series called "Discursos y Conferencias."³¹

A significant monograph by Carlos Arévalo y Carreño advocates the need for an international court of justice in the Western Hemisphere.³² The author briefly summarizes the development of various hemispheric doctrines and policies and makes recommendations on the organization of and procedural rules for an Inter-American Court of Justice.

Víctor Andrés Belaúnde, well-known educator, diplomat, political scientist,

²⁷ Checa Drouet, Benigno. *La doctrina americana del uti possidetis de 1810*. Lima, Libr. é Impr. Gil, 1936. 154 p.

²⁸ ———. *Fundamentos del derecho internacional según las modernas teorías. La soberanía*. [Information incomplete]

²⁹ ———. *Defensa de la paz. Estudios de derecho internacional público*. Lima, Libr. é Impr. Gil, 1937. 179 p.

³⁰ *Disposiciones dictadas por el gobierno del Perú con motivos de la guerra europea. Setiembre 1939-Agosto 1941*. Lima, Impr. Torres Aguirre, 1941.

³¹ Sayán Alvarez, Carlos. *Política nacional é internacional del Perú* . . . Lima, Edit. Relieves Americanos, 1943. 51 p.

³² Arévalo y Carreño, Carlos. *Hacia una corte interamericana de justicia*. Lima, Sanmartí y Cía., S.A., 1944. 46 p.

and legislator who while in the United States as a political exile lectured on Hispanic American culture at Johns Hopkins University and other prestigious American universities, wrote about Peru's initial efforts to govern within a constitutional framework from the standpoint of international law³³ (see constitutional law). He also wrote about the United Nations San Francisco Conference³⁴ and the preliminary steps leading up to it, including the international conferences at Dunbarton Oaks. His analysis of the actions taken in San Francisco regarding the U.N. charter provisions, the World Court, and the inter-American system constitutes a valuable contribution to the Peruvian consciousness of international laws and principles.

Rafael Belaúnde y Diez Canseco, equally as illustrious as his older brother Víctor and also a lawyer, law professor, and former diplomat, was active in the specialized field of international law. Six of his addresses urging unification and solidarity among the American nations, delivered between 1931 and 1944, may be found in a one-volume collection,³⁵ together with two of his draft proposals on American economic coordination and creation of a Pan American School of Social Sciences.

A number of law school theses³⁶ are footnoted to supplement the major sources previously described. These theses represent works of the late 19th and early 20th centuries.

³³ Belaúnde, Víctor Andrés. *La constitución inicial del Perú ante el derecho internacional*. Lima, Impr. Torres Aguirre, 1942. 468 p.

³⁴ ———. *La conferencia de San Francisco*. Lima, Tall. Gráf. de la Edit. Lumen, 1945. 160 p.

³⁵ Belaúnde y Diez Canseco, Rafael. *Por la unidad de América*. Lima, Tall. Gráf. de la Edit. Lumen, S.A., 1944. 94 p.

³⁶ Vivanco, José María. *El corso es altamente inmoral y sus consecuencias son trascendentes; sin embargo las naciones débiles tienen perfecto derecho para ejercerlo*. Lima, 1866. [Thesis]

Vidaurre, Salvador. *Las naciones deben proteger y desarrollar el derecho del comercio entre sí*. Lima, 1869. [Thesis]

Arias, Antenor. *Manifestar la inviolabilidad del territorio de una nación y la jurisdicción a que debe estar sujeto el violador*. Lima, 1870. [Thesis]

Montoya, Ezequial. *El Asilo Diplomático*. Lima, 1873. [Thesis]

Valverde, Emilio. *Sobre el Corso*. Lima, 1873. [Thesis]

Rada y Paz Soldán, Germán. *Captura de la propiedad privada en el mar. ¿Es o no una hostilidad legítima?* Lima, 1891. [Thesis]

Jiménez, Plácido. *Los plebiscitos internacionales y el de Tacna y Arica*. Lima, 1891. [Thesis]

Urteaga, Horacio H. *Derecho Internacional Americano*. Lima, 1900. [Thesis]

Delgado y Morey, Manuel. *¿Es o no jurídicamente responsable un estado por los daños que sufren los extranjeros durante una guerra civil?* Lima, 1902. [Thesis]

———. *Estudio sobre el contrabando de guerra*. Lima, 1906. [Doctoral thesis]

Arenas y Loayza, Carlos. *Ensayo sobre la Doctrina Monroe*. Lima, 1905. [Thesis]

Contemporaneous works are relatively few. In 1951 Guillermo García Montúfar wrote a textbook along the usual classical lines.³⁷ In his book Professor García includes contemporary developments relating to the United Nations and regional international law in the Eastern Hemisphere. Two years later, the country's foreign ministry compiled the laws and relevant regulations applicable to Peru's foreign service.³⁸

Victor Haya de la Torre, the powerful and controversial leader of APRA, a formidable political party (see constitutional law), who was twice an unsuccessful candidate for the presidency, was forced to go into hiding in the fifties when his party was outlawed. Granted political asylum by the Colombian Embassy in Peru, he remained a guest of that embassy for several years during which time his case was brought before the International Court of Justice at The Hague. His represents an excellent case study of diplomatic asylum. Source materials for such a study include works published by both Peruvians and non-Peruvians in Lima,³⁹ Bogotá,⁴⁰ Mexico City,⁴¹ and New York.⁴²

In the mid-sixties, two important works which appear to be the most recent to date came from the pens of two distinguished gentlemen, Luis Marchand Stens and Felipe Portocarrero Olave. Dr. Marchand, professor of public international law at the Catholic University, diplomat, and press award recipient for his excellent newspaper articles on various international law questions, produced what could serve both as a textbook and a general reference tool.⁴³ Combining both public and private international laws and institutions, this research tool appears to consist of six volumes, the first two of which have been issued and are now in the collections of the Library of Congress. One deals with the concept of nationality and pertinent general principles. Specific questions treated, among

³⁷ García Montúfar, Guillermo. *Derecho Internacional Público*. Lima, Univ. Nacional Mayor de San Marcos, Facultad de Derecho. 137 p.

³⁸ *Leyes y reglamento del servicio diplomático del Perú*. Lima, 1953. 100 p.

³⁹ *Proceso sobre asilo entre el Perú y Colombia ante la Corte Internacional de Justicia. Documentación pertinente al desarrollo del juicio sentencia del 20 de noviembre de 1950*. Lima, Ministerio de Relaciones Exteriores, 1951. 823 p.

⁴⁰ *El derecho de asilo ante la Corte Internacional de Justicia. Suplemento a Noticias de Colombia*. Bogotá, Imprenta Nacional, 1951. 42 p. (Ministerio de Relaciones Exteriores. Departamento de Información y Publicaciones)

⁴¹ Castillo y Bahena, Rafael V. del. *El Asilo Diplomático*. Mexico, 1951. 91 p.

⁴² International Court of Justice. *Reports of judgments, advisory opinions and orders. Asylum case (Colombia-Peru). Judgment of Nov. 20, 1950*. New York, Columbia University Press, 1951. 128 p.

⁴³ Marchand Stens, Luis. *Instituciones de derecho internacional*. Lima [Ediciones Peruanas] 1965- 6 v.

others, relate to the nationality of married women, loss of reacquisition of nationality, registry inscriptions, and naturalization. The other covers inter-American security arrangements and regional cooperation based on mutual defense pacts and consultation agreements on economics, judicial questions, and Communist infiltration. It analyzes in particular the Inter-American Conference for the Maintenance of Peace and Security in the continent; the book's appendixes consist of texts of pertinent agreements, treaties, resolutions, and protocols. On the other hand, Dr. Portocarrero, whose works have been described in other chapters, compiled his lecture courses on various aspects of public international law.⁴¹ These lectures were delivered at armed services schools and also at the Diplomatic Academy over a period of time. The texts of international documents are incorporated in an appendix. They consist of regional charters, general and special, as well as some treaties and related excerpts of Peruvian legal provisions.

Boundary Controversies

In 1924 a compulsory course on the history of Peru's various boundary controversies was initiated and included in the country's educational curricula. Dr. Angulo Puente Arnao was partially responsible for the inclusion of this course. His interest in this political and legal question resulted in several published works, some dealing with boundary controversies in general and others involving Peru's specific disputes with Brazil, Ecuador, and Colombia. In 1921 he contributed a brief exposition on Peru's boundary negotiations during the first hundred years of its existence as an independent nation.¹ This work was awarded a "diploma of honor" by the Regional Society of Tacna, Arica, and Tarapacá. Two years later he issued the first edition of a textbook,² subsequently updated, for use by the students in the compulsory course. Another professor in the same field, Raúl Porras Barrenechea, followed suit with a similar but abridged textbook,³ which was revised in the second edition for use by the students of the Anglo-Peruvian School.

Dr. Checa Drouet's dissertation ⁴ relative to the application of the principle of

⁴¹ Portocarrero Olave, Felipe. *Derecho Internacional Público*. Lima, Ediciones Peruanas, 1966. 519 p.

¹ Angulo Puente Arnao, Juan. *Nuestras negociaciones diplomáticas de límites con las repúblicas vecinas durante los cien años de vida independiente (1821-1921)* . . . Lima. Impr. Artística, 1921, 42 p.

² ———. *Historia de los límites del Perú*. Lima, 1924; 2.ed. 1927. 312 p.

³ Porras Barrenechea, Raúl. *Historia de los límites del Perú*. Lima, 1926; 2.ed., rev. y actualizada. 1930. 172 p.

⁴ Checa Drouet, Benigno. *La doctrina americana del uti possidetis de 1810*. Lima, Libr. é Impr. Gil, 1936. 152 p.

uti possidetis, the basis of much contention as to jurisdictional boundary lines, is believed to be of general interest to this section. So are two non-Peruvian works in English: Dr. Ireland's on boundary conflicts in South America which touches specifically on all of Peru's controversies, setting forth the highlights of each with citations to authoritative sources,⁵ and Dr. Marchant's which, although basically bibliographical, provides a chronological chain of agreements and treaties involving each conflict resulting in an excellent historical outline.⁶

Dr. Ulloa's book represents an authoritative work by a Peruvian on the international status of his country and on the final events as of 1941 of some of Peru's boundary negotiations or disputes with her neighbors.⁷

Peru's territorial problems with the border states of Bolivia, Brazil, Chile, Colombia, and Ecuador are the result, generally, of the vague demarcation of the Audiencia of Lima with which the country was to be coextensive and, specifically, of territorial war losses suffered at one time or another by Peru as well as some of her neighboring states. While all these boundary problems remain potentially serious today, the boundary question with Ecuador is the only one that has become the source of renewed tension recently. As the following sections on the individual controversies will show, no substantial works of recent imprint appear to have been published.

Peru and Bolivia

Peru's relations with Bolivia have been much closer than with the other contiguous countries. This is not surprising since at certain periods in both their colonial and independent existences they formed a single territorial unit. Bolivia's declaration of independence from Spain was officially recognized by Peru in a decree dated May 18, 1826. In November of the same year the two countries signed a convention respecting their boundaries. This agreement, however, was never implemented because of intermittent wars between the two up to 1828. On July 6 of that year a provisional peace treaty ended the hostilities. Subsequently a permanent treaty of peace and friendship was signed on August 25, 1831, revised November 8 of that year, and eventually ratified reciprocally the following year. This treaty stipulated, among other matters, that a study based on ethnic and geographic factors be undertaken of the frontier problems so that

⁵ Ireland, Gordon. *Boundaries, possessions and conflicts in South America*. Cambridge, Harvard University Press, 1938. 345 p.

⁶ Marchant, Alexander Nelson De Armand. *Boundaries of the Latin American Republics*. Washington, U.S. Govt. Print. Off., 1944. 386 p.

⁷ Ulloa y Sotomayor, Alberto. *Posición internacional del Perú*. Lima, Impr. Torres Aguirre, 1941. 404 p.

an "exact and natural" border line could be drawn between Peru and Bolivia. But soon thereafter the Peru-Bolivian Confederation came into fruition and thus obviated, at least temporarily, any need for a territorial demarcation. Following the collapse of the confederation, further attempts were resumed only to be thwarted once again by more armed conflicts. In 1879 in the famous War of the Pacific in which Peru and Bolivia banded together against Chile, Peru lost the provinces of Tarapacá, Tacna, and Arica, and Bolivia lost an outlet to the sea. These changes in territorial holdings necessarily called for changes in the means of establishing boundary lines.

After the war ended in 1882 a number of alternatives were tried. Negotiations over a period of time culminated in a series of memoranda, preliminary treaties, and a dozen or more unilateral and bilateral proposals. Finally, on September 23, 1902,¹ a treaty on demarcation of frontiers was concluded and signed in La Paz and was ratified March 9, 1904, by the governments of Peru and Bolivia. Provisions of this treaty, as revised, complemented or amended by such devices as "rectification" treaties² and protocols,³ provided the basic boundary-making guidelines. In 1929 a portion of the province of Tacna was returned to Peru by Chile and placed within Peruvian boundaries. The work of drawing border lines was entrusted to mixed boundary commissions created as the need arose at different times over a number of years.

Materials on this particular boundary dispute are mostly of Peruvian imprint or by Peruvian authors. No discrimination is being made, however, on the point of origin of the items as long as their subject matter is pertinent to this section.

Peru's perspective on the true boundaries is the subject treated by Mariano Felipe Paz Soldán⁴ in a brief 1878 work, a major portion of which is devoted to relevant copies of the texts of ancient documents and correspondence. Paz' work was followed by José Casimiro Ulloa's opinions and suggested solutions to the boundary problem.⁵

An early Bolivian official publication appeared in 1897⁶ concerning the region

¹ *Colección de tratados vigentes de la República de Bolivia*, v. 5, p. 406.

² *Ibid.*, p. 428.

³ *Ibid.*, p. 435.

⁴ Paz Soldán, Mariano Felipe. *Verdaderos límites entre el Perú y Bolivia*. Lima. Impr. Liberal, 1878. 74 p.

⁵ Ulloa, José Casimiro. *Línderos entre el Perú y Bolivia, ó solución del antagonismo y restablecimiento de su solidaridad*. Lima. Impr. de Torres Aguirre, 1889. 123 p.

⁶ Iturralde, Abel. *Cuestión de límites entre Bolivia y el Perú sobre la región de Caupolicán ó Apolobamba*. La Paz, Impr. de El Telégrafo, 1897. 264 p. (Oficina Nacional de Inmigración, Estadística y Propaganda Geográfica)

known as Caupolicán as it relates to the boundary dispute. The Caupolicán issue is likewise treated in another Bolivian work issued in two editions by Nicolás Armentía,⁷ a missionary who traveled extensively, became familiar with the area, and was in fact the author of many historical and geographical works. Another discussion of the Bolivian side of the controversy that goes into the early colonial history comes from the pen of Bautista Saavedra.⁸ The same author published in 1906 a more extensive work in which he pleads Bolivia's case before the Argentine government, then an arbitrator on the frontier litigations.⁹

The 1902 Treaty on Arbitration and Demarcation of Boundary Lines is the subject of an official report¹⁰ submitted to the Peruvian legislature by Peru's minister of foreign relations at the time. The text of the treaty appearing in the annex and a large folded map attached to the back of the volume provide easy reference to the disputed boundary areas.

The opinions sought by the Peruvian jurist Dr. Maúrtua from three outstanding French internationalists appear in a brief 1906 publication.¹¹ The opinions relate to the effect of influence which the Treaty of Petropolis, signed in 1903 between Brazil and Bolivia, would have on the Peru-Bolivian arbitration proceedings arising from the 1902 treaty.

Bolivia's brief in the case of 1902 over which Argentina arbitrated was published in three volumes.¹² The first volume contains the brief itself supported with maps, and the next two volumes carry the texts of the documents sustaining the allegations presented in the first.

The case for Peru appears more complex and is reflected in two main volumes supplemented by 15 volumes of extensive documentation.¹³ Peru's lengthy and most comprehensive reply to Bolivia's demand for certain territory as presented to

⁷ Armentía, Nicolás. *Límites de Bolivia con el Perú por la parte de Caupolicán*. La Paz, Telégrafo, 1897. 240 p.; 2.ed. 1905. 127 p.

⁸ Saavedra, Bautista. *El litigio Perú-Boliviano*. La Paz, Impr. Artística, 1903. 158 p.

⁹ ———. *Defensa de los derechos de Bolivia ante el gobierno argentino en el litigio de fronteras con la República del Perú*. Buenos Aires, Tall. de la Casa J. Peuser, 1906. 2 v.

¹⁰ *Memorandum que el Ministro de Relaciones Exteriores presenta al Congreso Nacional con motivo de los tratados celebrados con Bolivia sobre arbitraje de límites y demarcación de fronteras firmados en La Paz en 23 de noviembre y 30 de diciembre de 1902*. Lima, Impr. La Industria, 1903. 37, x p.

¹¹ Renault, Louis, and others. *Consultation pour le gouvernement du Pérou par . . . , A. de Lapradelle, et N. Politis*. Paris, A. Pedone, 1906. 29 p.

¹² *Alegato de parte del gobierno de Bolivia en el juicio arbitral de fronteras con la República del Perú*. Buenos Aires, Compañía Sud-Americana del Billetes de Banco, 1906. 3 v.

¹³ *Exposición de la República del Perú presentada al excmo. gobierno argentino en el juicio de límites con la República de Bolivia conforme al tratado de arbitraje de 30 de diciembre de 1902*. Barcelona, Impr. de Henrich y Comp., 1906-7. 17 v.

the Argentine Arbitration Convention on November 10, 1904, was printed in 1907 in Buenos Aires.¹⁴ Bolivia's response to Peru's position is covered in another work published the same year,¹⁵ which is supplemented by another volume divided into 19 parts (anexos) containing new and additional evidence in support of the Bolivian claims.¹⁶

In 1909 Víctor Muñoz, a Bolivian, issued a commentary on Argentina's arbitration efforts and resulting award.¹⁷ An excellent Brazilian treatise on the same subject is that of Euclides da Cunha, a Brazilian journalist.¹⁸ It was originally published in 1907, and a second edition printed in 1939 was preceded by a Spanish translation which was released under a slightly changed title.¹⁹

The Argentine award in the arbitration case and Bolivia's rejection of it aroused much interest in not only Argentina, Bolivia, and Peru but other countries as well. This interest is evident in a great number of materials written on the subject mostly by non-Peruvians. These sources are listed collectively under a single footnote beginning with the work of Matías Guillermo Sánchez Sorondo, an Argentine jurist.²⁰

¹⁴ *Contestación de la República del Perú á la demanda de la República de Bolivia presentada a la comisión asesora del gobierno argentino conforme al artículo 3° del reglamento procesal de 10 de noviembre de 1904*. Buenos Aires, Compañía Sud-Americana de Billetes de Banco, 1907. 560 p.

¹⁵ *Réplica de parte de Bolivia al alegato peruano en el litigio de límites de que es árbitro el excmo. gobierno argentino*. Buenos Aires, Impr. Nacional de J. Lajouane Cía., 1907. 376 p.

¹⁶ *Nueva prueba de parte de Bolivia apoyando la réplica al alegato peruano*. Buenos Aires, Impr. Nacional de J. Lajouane & Cía., 1907. 235 p.

¹⁷ Muñoz Reyes, Víctor. *El laudo arbitral argentino*. La Paz [Impr. de El Tiempo, 1909]

¹⁸ Cunha, Euclides da. *Perú versus Bolivia*. Rio de Janeiro, Typ. do Jornal do Commercio, 1907. 201 p.; 2.ed. 1939. 194 p. (Coleção Documentos Brasileiros)

¹⁹ ———. *La cuestión de límites entre Bolivia y el Perú*. (Traducción) Buenos Aires, Sud-Americana de Billetes de Banco, 1908. 151 p.

²⁰ Sánchez Sorondo, Matías Guillermo. *El litigio Perú-boliviano y el fallo arbitral*. Buenos Aires, Compañía Sud-Americana de Billetes de Banco, 1909. 120 p.

Bolivia-Perú. Documentos que justifican la actitud de Bolivia contra el laudo arbitral dictado por el presidente de la República Argentina en la cuestión de límites con la República del Perú. New York, York Printing Co., 1909. 63 p.

Prado y Ugarteche, Javier. *El fallo arbitral del gobierno argentino en el juicio de límites Perú-boliviano y la actitud de Bolivia*. Lima, Ofic. Tip. de La Opinión Nacional. 1909. 59 p.

Díez de Medina, Eduardo. *El laudo argentino en el litigio Perú-boliviano*. La Paz, Impr. Artística, 1909. 55, vii p.

Van der Burch, Alexandre (Comte). *La procès international entre la Bolivie et le Pérou. L'arbitrage du gouvernement argentin*. Bruxelles, Impr. Ed. Ordry, 1909. 145 p.

Balliván, Adolfo. *El laudo argentino. Inaceptable para Bolivia, inconveniente para el Perú*. La Paz, Tip. Comercial de Ismael Argote, 1909. 108 p.

Avellaneda, Marco M. *Cuestión de límites entre el Perú y Bolivia. Opinión jurídica*. Buenos Aires, Imp. Lit. y Enc. de G. Kraft, 1909. 42 p.

El arbitraje entre las Repúblicas de Bolivia y el Perú y su última negociación sobre fronteras. Documentos diplomáticos. La Paz, Impr. Artística, 1909. cxxix p.

Peru and Brazil

The Amazon region is the common ground between Peru and Brazil over which the Spaniards and the Portuguese fought long before it became the root of contention between these modern Latin American republics.

By provision of the Treaty of San Ildefonso of October 1, 1777, an attempt was made to draw a demarcation line between the Spanish and the Portuguese possessions in the New World. Peru did not agree with the proposed line, and after independence asserted her rights over lands to the east of this line. In a general treaty of friendship entered into with Brazil as early as July 8, 1841, an article provided that exact boundary lines should be delineated in disputed areas. Brazil, however, did not ratify the treaty. Peru, on the other hand, was beset with political turmoil. A temporary union with Bolivia, followed by war, suspended the boundary negotiations until President Castilla assumed the presidency of Peru in 1845. Negotiations with Brazil were then reopened, and in a commercial agreement or convention signed in 1851 provision was again made that the boundary should be agreed upon in accordance with the doctrine of *uti possidetis*. This treaty yielded no immediate results. A joint commission named in 1861 to decide on the line disagreed, and their work was continued by a second group appointed in 1865. A line was finally established by 1874.

Early in the 20th century, Bolivia and Brazil settled a dispute over the rich Acre region by the Treaty of Petropolis of 1903. Peru regarded the terms of this settlement in violation of her territorial rights and thus renewed this boundary conflict with Brazil. In 1904 Peru and Brazil agreed to settle the boundary line between them through diplomatic channels. Eventually, pursuant to a treaty of

Fiore, Pasquale. *Conflicto de límites entre la Bolivia y el Perú. Observaciones sur la sentencia arbitral, rendue par le Président de la République Argentine le 9 juillet 1909*. Paris, A. Pedone, 1910. 39 p. [Extracted from *La Revue Générale de Droit International Public*]

———. *Remarks on the arbitral sentence pronounced by the President of the Argentine Republic on July 9, 1909 on the boundary question between Bolivia and Peru . . .* Translated from the French by Fanny R. Bandelier. New York [1910?] 46 p.

Libro azul. Arbitraje argentino en la cuestión de límites entre las Repúblicas del Perú y Bolivia. Ministerio de Relaciones Exteriores y Culto de la República Argentina. Buenos Aires, Tall. Gráf. de la Penitenciaría Nacional, 1909. 250 p.

Weiss, André. *Bolivia et Pérou. L'arbitrage de 1909 entre la Bolivie et le Pérou*. Paris, A. Pedone, 1910. 39 p. [Extracted from *La Revue Générale de Droit International Public*]

Peru-Bolivia Boundary Commission, 1911-13. *Reports of the British officers of the Peruvian Commission. Diplomatic memoranda and maps of the boundary zone. Edited for the Government of Peru by the Royal Geographical Society of London*. London, Cambridge Univ. Press, 1918. 242 p.

Ascarrunz, Moisés. *La confraternidad Perú-boliviana en el centenario de Ayacucho*. Lima [Cases Edit. La Opinión Nacional] 1925. 319 p.

Angulo Puente Arnao, Juan. *Historia de los límites del Perú*. [1.ed.?] 2.ed. Lima, Impr. de la Intendencia General de Guerra, 1927. 312, xv p.

September 8, 1909,¹ signed by both countries in Rio de Janeiro, the controversy appeared to have come to a final solution.

Very little legal literature seems to exist on this particular controversy outside of the general works on boundaries or international conflicts already described.

Before the settlement of the dispute a monograph appeared in English by the eminent North American internationalist John Bassett Moore;² a documented commentary on the controversy, authorized by the Peruvian government,³ was written by Dr. Wiese; and a doctoral thesis⁴ was published by a San Marcos University graduate student who later became a law professor there.

A 1909 compilation⁵ of the agreements and records of negotiations preceding a treaty of 1909 contains the Convention of Lima of October 13, 1851, the treaty of peace between Bolivia and Brazil of 1867, the Petropolis Treaty of 1903, the 1909 treaty itself, and more importantly, Peru's documented protests, allegations, and claims. Two years earlier, this documentation was officially published in the same format as it was when presented for arbitration.⁶

The work accomplished by Brazil's various boundary demarcation commissions includes the establishment of a frontier between Brazil and Peru.⁷ A 1925 paper on the subject,⁸ presented to the Third Pan American Scientific Congress which met in Lima, was located and deals with a much earlier period when Brazil was still an empire.

¹ *O tratado de 8 de setembro de 1909 entre os estados unidos do Brasil e a República do Pérou, completando a determinação das fronteiras entre os dois países.* Rio de Janeiro, Impr. Nacional, 1910. 191 p.

² Moore, John Basset. *Brazil and Peru, boundary question.* New York, The Knickerbocker Press [1904] 32 p.

³ Wiese, Carlos. *La cuestión de límites entre el Perú y el Brasil.* Lima, Impr. La Industria, 1904. 270 p.

⁴ Pérez Figuerola, Arturo. *Nuestra cuestión de límites con el Brasil.* Lima, Impr. Liberal, 1905. 136 p.

⁵ *Límites entre el Perú y el Brasil. Antecedentes del tratado de 8 de septiembre de 1909.* Lima, Tall. Tip. de la Revista [1909] 69 p.

⁶ Maúrtua, Aníbal. *Arbitraje internacional entre el Perú y el Brasil. Pruebas de las reclamaciones peruanas presentadas al tribunal arbitral.* Buenos Aires, Impr. Lit. y Enc. de G. Kraft, 1907. 545 p.

⁷ *Limites do Brasil. Informações relativas as comissões brasileiras demarcadores de limites . . . 1913.* Rio de Janeiro, Impr. Nacional, 1918.

⁸ Peregrino de Silva, Manoel Cicero. *Apontamentos sobre as primeiras relações diplomáticas entre a República do Perú e o Império do Brasil . . .* Rio de Janeiro, Impr. Nacional, 1925. 14 p.

Peru and Chile

The controversy between Peru and Chile may be said to have commenced as early as 1865, at the time Chile came to Peru's aid when the Spanish fleet had seized the Chincha Islands and blockaded some of the Peruvian ports. A treaty of alliance between Chile and Peru was signed in Lima on December 5, 1865, to join forces against Spain. Although actual warfare was limited to the bombing of Callao and Valparaíso by the Spanish fleet, a state of war existed until 1871, at which time an armistice was signed through the mediation of the United States. Bolivia and Ecuador in the meantime, had also joined Peru as allies. Later, on February 6, 1875, Peru signed a secret defense pact with Bolivia against any foreign aggression in the Tacna region in which both countries had an interest. Argentina, who was also a party to the preliminary negotiations, withdrew before the treaty was completed.

As a result of this secret alliance, Chile declared war on Peru as Bolivia's ally in the War of the Pacific which commenced soon after the Spanish armistice was signed. On January 17, 1881, Lima fell in the hands of the Chilean troops, and on the following day, Callao fell. Chilean domination of Peru lasted until the Treaty of Ancón officially terminated the state of war, and the Peruvian flag was again raised over Lima on October 25, 1883. The treaty was ratified by the Peruvian legislature on March 8, 1884, while a limited number of Chilean occupation troops still remained in the city.

The treaty stipulated that Peru should cede to Chile the coastal province of Tarapacá, and the provinces of Tacna and Arica would remain in Chile's possession, subject to Chilean legislation for a period of 10 years. At the end of that time, a plebiscite would be held by the inhabitants of the provinces who would then vote whether to remain permanently under Chile's sovereignty or become once again part of Peruvian territory. The cost to the winning country would be 10 million pesos. It was against this background that the now famous Tacna-Arica controversy arose.

In 1885 Chile proceeded to subdivide the provinces in question. But in the process, Chile also included the district of Tarata within its jurisdiction. On February 16, 1885, Peru protested that Tarata did not belong to Chile's war-occupied territory according to the terms of the Treaty of Ancón. Chile, nevertheless, continued to assert authority over the district.

Pursuant to the Treaty of Ancón, the protocol as to form and requirements of the plebiscite was to be determined in the future. On April 4, 1893, Peru requested that Chile proceed to prepare this protocol. Political turmoil and differences of opinion prevented any agreement on this point until the end of the 10-

year period (1894). Thereafter, Peru proposed that a third nation should arrange the plebiscite, but Chile objected to this and all other proposals and continued instead to retain possession and dominion over Tacna and Arica. In 1898, the matter was submitted to the queen of Spain for arbitration. Peru ratified the resulting protocol, but Chile did not. As a result, diplomatic relations were severed between the two countries from 1901 to 1905. To worsen matters, Chile's intervening treaties with Bolivia also affected these provinces and Peru found itself protesting incessantly. Intermittent mediation efforts by the United States and the Vatican were fruitless. Following the end of World War I and the creation of the League of Nations at Geneva, Peru wanted the League to reconsider and modify the Treaty of Ancón. Since Chile had been in full possession of the disputed provinces for more than 10 years, Peru feared that a plebiscite vote to remain with Chile would be a foregone conclusion. She preferred therefore to have the matter submitted for arbitration.

On January 17, 1922, President Harding invited Peru and Chile to send delegates to Washington for discussion. Peru's delegates, Melitón F. Porras and Hernán Velarde, took part in a series of conferences held between May 15 and July 21, 1922, with the Chilean representatives and the U.S. secretary of state, Charles Evans Hughes. A protocol of arbitration was signed requesting President Harding to act as arbitrator. Harding accepted the office on January 29, 1923. Both sides then submitted printed allegations and briefs, claims and counter-claims. On March 4, 1925, President Calvin Coolidge, who had succeeded Harding as president of the United States, handed down an opinion and award setting forth the terms under which the plebiscite would be held and the return by Chile to Peru of the province of Tarata. Chile accepted the award immediately. Peru, after some coaxing, followed suit. Subsequently, a plebiscite commission was named, composed of General Pershing of the United States as chairman, Augustín Edwards of Chile, and Manuel de Freyre y Santander of Peru. Upon the illness and resignation of General Pershing as commission chairman, Maj. Gen. William Lassiter was appointed in his place. Under Lassiter's stewardship, an elaborate plan for carrying out the plebiscite was discussed and mapped out. However, during the process of registering voters, violence broke out so frequently that it soon became apparent that a fair plebiscite could never be held. Ultimately, the termination of the proceedings was voted on by the United States and Peru over the objections of Chile. Diplomatic relations were broken off again between the principal adversaries until the U.S. Secretary of State Kellogg suggested renewing negotiations on the controversy. Herbert Hoover, who by then had become president, used his good offices towards a final adjustment of the dispute by recommending a fair division of the disputed territories. Finally,

a treaty was signed in Lima on June 3, 1929, which drew a line between Tacna and Arica, subject to certain servitudes, monetary compensation, and police security which the circumstances would warrant. On August 28, 1929, the province of Tacna was given back to Peru, and Arica remained in Chile's possession.

Since the mid-sixties, Peru and Chile appear to have been pursuing independent foreign policies, and presumably because of this mutual attitude, Peruvian-Chilean relations have become peaceful.

The literature for this particular boundary conflict includes materials of Peruvian, Chilean, and other imprints. Items which are considered purely descriptive or historical have not been included.

The record of U.S. mediation efforts, together with the text of the draft protocol referred to earlier in this section, was published by Dr. Francisco García Calderón¹ while he was "provisional" president of Peru. The role played by the U.S. Minister to Peru, Cornelius A. Logan, is particularly discussed in this work.

Official documents of the Peruvian Ministry of Foreign Relations from 1892 give an account of the diplomatic negotiations and correspondence carried on between Peru and Chile.² A 1900 Foreign Ministry circular issued to Peruvian legations in foreign countries contains official government policy on the territorial dispute.³ The same ministry published collections of diplomatic notes and correspondence exchanged with Chile concerning Tacna-Arica, including the suggestions for a protocol on the ill-fated plebiscite which was to have been held in 1894.⁴ The opinions and observations of Drs. Prado y Ugartecche and Seoane of Peru, and of Alejandro Alvarez of Chile, as well as those of other statesmen of the time are found in these collections. The material and the period covered by the first edition are likewise dealt with in an English publication of 1918.⁵

One of Peru's outstanding diplomats and internationalists, Dr. Maúrtua, issued both Spanish⁶ and English⁷ editions of a work relating to the Peruvian-Chilean territorial problems. The Chilean viewpoint on the history and status of

¹ García Calderón, Francisco. *Mediación de los Estados Unidos de Norte América en la guerra del Pacífico, el señor don Cornelius A. Logan y el dr. don Francisco García Calderón*. Buenos Aires, Impr. y Libr. de Mayo, 1884. 168 p.

² *Negociaciones diplomáticas con Chile*. Ed. oficial. Lima. Impr. del Estado, 1892. 112 p.

³ *Peru and Chile*. [Lima? 1900] 32 p. (Ministerio de Relaciones Exteriores)

⁴ *Comunicaciones cambiadas entre cancillerías de Chile y el Perú sobre la cuestión de Tacna y Arica (1905 á 1908)* Santiago de Chile. Impr. Barcelona, 1908. 244 p.; 2.ed. 1912. 440 p.

⁵ "Rosebook" of Chile. *Communications exchanged between the chancelleries of Chile and of Peru regarding the question of Tacna and Arica (1905 to 1908)* Washington, Gov. Print. Off., 1918. 88 p.

⁶ Maúrtua, Víctor M. *La cuestión del Pacífico*. Lima, Moreno, 1901; another ed. 1919. 651 p.

⁷ ———. *The question of the Pacific; an edition in English. Enlarged in 1901 by F. A. Pezet and brought up to date by the author* [New York, Harper & Bros., 192-?] 353 p.

the dispute at the turn of the 20th century is highlighted in the work of Rafael Egaña,⁸ a work which was translated into English by Edwyn C. Reed.⁹ A Mexican reprint of the original Spanish text appeared in 1901.

While in Colombia as Peru's diplomatic representative, Dr. Ulloa solicited, through a circular letter, the opinions of Colombian statesmen and authorities on the Tacna-Arica controversy. Sixty-seven of these opinions appear together with a monograph by Rafael Rocha Gutiérrez entitled *La cuestión del Pacífico*, in a 1905 Ulloa compilation.¹⁰

The Treaty of Ancón and subsequent related agreements and protocols are fully discussed by Dr. Luis Aldunate, a noted Chilean authority who quite understandably stresses the Chilean perspective.¹¹

Argentina's position on the dispute may be gathered from a series of letters to and from Bartolomé Mitre, its president at the time, who compiled and published such letters in Chile in 1919.¹² In the same year three more works appeared. One consists of an address by the distinguished Luis Barros Borgoño.¹³ The address, subsequently published in French, expounds on the meaning of a 1918 message to both Peru and Chile from Woodrow Wilson, U.S. president during that period. Another work by Anselmo Blanchot Holley,¹⁴ probes the nature and thrust of the relations among Chile, Peru, and Bolivia starting from 1820 through the years leading up to the War of the Pacific and the postwar treaty concluded in Ancón. The third item is that of Adolfo Calderón Cousiño which is a brief history of Peruvian-Chilean relations from the Chilean standpoint.¹⁵ It was published in two editions, and the second edition was translated into English the following year.¹⁶

⁸ Egaña, Rafael. *La cuestión de Tacna i Arica. Antecedentes históricos. Jestioness diplomáticas. Estado actual*. Santiago de Chile, 1900; another ed. 1901. 299 p.

⁹ ———. *The Tacna and Arica question (translated from the Spanish edition by Edwyn C. Reed)*. Santiago de Chile. Barcelona Printing Office. 1900. 152 p.

¹⁰ Ulloa, Alberto. *La opinión colombiana y el problema de Tacna y Arica*. Lima, Impr. de El Tiempo, 1905. 441 p.

¹¹ Aldunate, Luis. *Los tratados de 1883-1884, a propósito de las declaraciones del mensaje presidencial de 1° de junio en curso*. Santiago de Chile. Impr. Barcelona, 1912. 288 p.

¹² Mitre, Bartolomé. *La cuestión chileno-peruana; la política de la República Argentina*. Santiago de Chile, Empr. Zig-Zag, 1919. 117 p.

¹³ *El mensaje del Presidente Wilson. Discurso pronunciado en la Cámara de diputados por el Ministro de Relaciones Exteriores, don Luis Barros Borgoño en las sesiones 12 y 13 de diciembre de 1918*. Santiago de Chile, Impr. Universitaria. 1919. 42 p.

¹⁴ Blanchot Holley, Anselmo. *Conferencia Internacional*. Santiago de Chile, 1919. 60 p.

¹⁵ Calderón Cousiño, Adolfo. *La cuestión chileno-peruano; breve historia*. Santiago, Empr. Zig-Zag, 1919. 197 p.; 2.ed. 1919. 235 p.

¹⁶ ———. *Short diplomatic history of the Chilean-Peruvian relations, 1819-97*. Santiago de Chile, Impr. Universitaria, 1920. 255 p.

Source materials for May to July 1922 on the Washington arbitration conferences held at the suggestion of President Harding appear in a publication printed for public dissemination under the official seal of Chile's Foreign Ministry.¹⁷

Another compilation includes public documents on the controversial boundary issue. These historical documents cover a hundred-year period beginning with the 1800's.¹⁸

In 1919 Víctor Andrés Belaúnde, the noted Peruvian legal historian, contributed *Nuestra cuestión con Chile* (*Our Problem with Chile*).¹⁹ This item, translated into English a few years later, bore an entirely different title.²⁰ The work treats of the causes of the War of the Pacific, U.S. mediation, the treaty of 1884, and subsequent negotiations, arbitrations, and agreements.

The arbitration period inspired a flood of literature on the Tacna-Arica controversy. In addition to those already described, there are many legal briefs from both contending parties which were filed for the consideration and arbitration of President Harding in 1923 and 1924; the Peruvian documents were published in both Spanish²¹ and English.²²

In Argentina, Edmundo Gutiérrez wrote a commentary under the pen name Verto Andino.²³ This item is said to have also been published in English. A critique of Chile's conduct over a period of a century and her official actions and general attitude during the arbitration proceedings is the subject matter of the contribution of Ismael Portal y Espinosa.²⁴

¹⁷ *Las conferencias de Washington. Antecedentes reunidos por orden del Ministro de Relaciones Exteriores, don Ernesto Barros Jarpa 22 de agosto de 1922.* Santiago de Chile, Impr. Lit. y Enc. La Ilustración, 1922. 198 p.

¹⁸ *Chile y la independencia del Perú, 1821-1921; documentos históricos oficiales.* Santiago de Chile, Impr. Cervantes, 1921. 79 p.

¹⁹ Belaúnde, Víctor Andrés. *Nuestra cuestión con Chile.* Lima. Sanmartí y Cía., 1919. 259 p.

²⁰ ———. *The Treaty of Ancón in the light of international law.* Washington, D.C., 1922. 108 p.

²¹ *Arbitraje entre el Perú y Chile. Alegato del Perú, presentado al árbitro, el Presidente de los Estados Unidos sobre la cuestión del Pacífico conforme al protocolo y acta complementaria firmados entre la República del Perú y la República de Chile el 20 de julio de 1922 en Washington, D.C. y ratificados el 15 de enero de 1923.* Lima, T. Scheuch. 1925. 228 p.

²² *Arbitration between Peru and Chile. The case of Peru.* Washington, D.C. [National Capital Press, Inc.] 1923. 2 v.

²³ Gutiérrez, Edmundo. *El litigio del Pacífico sur en el arbitraje de los Estados Unidos.* Buenos Aires [Ferrari Hnos. Impr.] 1924.

²⁴ Portal y Espinosa, Ismael. *Chile ante el árbitro, su conducta desde 1820.* Lima, Libr. é Impr. Gil, 1924. 219 p.

In 1925 several Peruvian works appeared. The first, by Pío Máximo Medina,²⁵ discusses the Coolidge award, the disastrous efforts at holding the plebiscite, and other related matters; the second, by Evaristo San Cristóval,²⁶ contains a study by Manuel Felipe Paz Soldán, as well as a discussion of the Atacama question by Manuel M. Salinas of Bolivia. Also bound with this work is a Chilean monograph by Rafael Edwards entitled *Las Relaciones entre Chile y el Perú*. The third, by Manuel Lorenzo Guerra,²⁷ relates to the 1884 Treaty of Ancón and the following arbitration efforts by the United States. Lastly, a fourth work of the same period is a commentary by José Salvador Caveró²⁸ who had served as an officer in the Peruvian army during the War of the Pacific.

In the United States, a professor at the University of Iowa, William Jefferson Dennis, wrote on the history of the dispute from its commencement through 1926, touching on the plebiscite commission and the U.S. role.²⁹ A complementary work on the same subject was produced by the same author in 1931.³⁰

Following the 1929 settlement of the controversy, Federico Basadre³¹ and Enrique Brieba,³² Peruvian and Chilean representatives in the Mixed Boundary Commission, published separate official and technical texts. Of the two reports, the Chilean's is more fully documented and much more exhaustive.

Two other works provide a fitting end to this listing: Dr. Arturo García Salazar's diplomatic history of the post-War of the Pacific relations between Peru and Chile covering the period from 1884 to 1922,³³ and lastly, Dr. Luis

²⁵ Medina, Pío Máximo. *La controversia peruano-chilena*. Lima, Impr. Torres Aguirre, 1925-26. 2 v.

²⁶ San Cristóval, Evaristo. *La cuestión limítrofe en Chile, importantes estudios compilados . . .* [1.ed.?] 2.ed. Lima, Impr. La Victoria, 1925. 78 p. [With Edwards, Rafael. *Las relaciones entre Chile y el Perú*. Santiago de Chile, 1923]

²⁷ Guerra, Manuel Lorenzo. *El Tratado de Ancón y el laudo arbitral de los Estados Unidos de Norte América*. Lima, 1925.

²⁸ Caveró, José Salvador. *El arbitraje sobre la controversia del Pacífico sur*. Lima, Rávago, 1925.

²⁹ Dennis, William Jefferson. *Documentary history of the Tacna Arica dispute . . .* Iowa City, The University, 1927 p. 262.

³⁰ ———. *Tacna and Arica, an account of the Chile-Peru boundary dispute*. New Haven, Yale University Press, 1931. 332 p.

³¹ Basadre, Federico. *Memoria sobre los trabajos efectuados para la demarcación de la frontera entre Perú y Chile . . .* Lima [1930] 86 p.

³² Brieba, Enrique. *Memoria sobre los límites entre Chile y Perú de acuerdo con el tratado del 3 de julio de 1929*. Santiago de Chile, Instituto Geográfico Militar [1931] 3 v.

³³ García Salazar, Arturo. *Historia diplomático del Perú*. Lima, A. J. Rivas Berrío, 1930-v. 1 (Chile 1884-1922)

Felipe Paz Soldán's retrospective monograph on the events of the war itself.³⁴

Peru and Colombia

Between 1821 and 1830, the territorial basis of the boundary conflict between Peru and Colombia was the same as that between Peru and Ecuador, since during that period Ecuador still formed part of what was then known as the Republic of Gran Colombia.

There are two distinct phases in the Peru-Colombian dispute. The first may be said to have commenced in 1830 when Ecuador seceded from Colombia, taking with her the boundary problems connected with the provinces of Maynas and Jaén. At the beginning, Colombia's dispute with Peru was limited to the province of Loreto.

Colombia found itself constantly protesting Peru's alleged incursions into her territory. In 1851 Colombia declared that the treaty or boundary agreement concluded that year between Brazil and Peru violated her sovereign rights because it included lands and rivers which she claimed were hers. The same protest was renewed in 1866 and then again in 1869. The Colombians objected specifically to the markers drawn up on the Putumayo River by the Peru-Brazilian boundary commission.

On May 6, 1904, Colombia and Peru signed a treaty pursuant to which both would submit the conflict to the king of Spain for arbitration. The treaty, however, was not ratified by Colombia. On September 12, 1905, another treaty was signed, providing for arbitration by the Pope. A *modus vivendi* provided for the maintenance of the status quo in the disputed, rubber-rich area bordering the Putumayo River. Ultimately, however, the Pope's intercession had to be held in abeyance pending the outcome of the Peru-Ecuadorian dispute which was then being arbitrated by the king of Spain.

The second phase of the dispute commenced on March 24, 1922, with the conclusion of the Treaty of Boundaries and Navigation signed by Alberto Salomón for Peru and Fabio Lozano T. for Colombia. Popularly known as the Salamón-Lozano Treaty, it provided for the marking of a definite frontier line along the Putumayo River and for the cession of the Amazonic corridor or trapezium to Colombia. In 1924 before the ratification of the treaty could take place, Brazil filed protests which were later withdrawn because of the mediation in March 1925 of U.S. Secretary of State Hughes. Finally, on March 19, 1928, Peru and Colombia ratified the treaty. The boundary commission subsequently

³⁴ Paz Soldán, Luis Felipe. *Páginas históricas de la guerra del Pacífico*. Lima [Impr. Americana] 1943. 81 p.

created under the terms of the treaty completed its work in March 1930. The town of Leticia, heretofore subject to Peruvian sovereignty, was included in the portion which eventually became part of Colombia in accordance with the newly drawn boundary lines.

The change in sovereignty met with still opposition from the residents of Leticia. Before long, armed Peruvians took control of the town. Although ostensibly undertaken without the knowledge or support of the government of Peru, Peruvian troops were dispatched on November 26, 1932, to occupy Leticia. Colombia reacted sharply and prepared to send vessels and men up the Putumayo River. Peru attempted to settle the impasse peacefully. She sought the help of the Permanent Commission on Inter-American Conciliation, but Colombia declined to cooperate on the ground that this was a domestic problem rather than an international one. Meanwhile, the League of Nations offered some advice, Brazil attempted to mediate, and the United States reminded the adversaries of their nonaggression pact which had been signed at the Sixth International Congress of American States in Havana in 1928. Despite these developments hostile acts continued between the two countries. On February 15, 1933, Peru and Colombia broke off diplomatic relations.

The hostilities did not end until President Sánchez Cerro of Peru was assassinated and was succeeded by President Oscar Benavides. Responding to President Benavides' friendly overture, the adversary countries agreed to accept the League of Nations' peace formula—a League commission would administer the disputed territory temporarily with the help of an international peacekeeping force. On May 25, 1933, after the signing of an agreement to that effect, the Peruvian troops were withdrawn. A year later, upon the termination of the League's intervention, the two nations reached an agreement or a protocol. Concluded and signed May 24, 1934, in Rio de Janeiro, the protocol recognized and upheld the original treaty (*supra*) and provided for other agreements on conflicting problems of free river navigation, commerce, and policing the frontier for the safety and security of its inhabitants. The Peruvian participants to this important resolution reached at Rio de Janeiro included the eminent internationalists and statesmen Drs. Maúrtua, Belaúnde, and Ulloa y Sotomayor.

There is an abundance of legal literature on the boundary question published in both Peru and Colombia, much of which is very bitter and partisan. Since a great many of these source materials overlap, a selective listing rather than an exhaustive bibliography will be undertaken for this particular section.

Drafts for various treaties between Colombia and Peru were collected and published in 1870. This compilation includes a Treaty of Friendship, Commerce,

and Navigation of February 10, 1870, a consular convention of January 20 of the same year, as well as a reciprocal agreement for extradition of criminals.¹

Dr. Paz Soldán issued a pamphlet-commentary² on the negotiations between Peru and Colombia spanning the period from 1821 to 1830 when Ecuador was still part of Colombia. The material was written in response to an article by José A. de Izcuí which appeared in 1906.

A Colombian work by Vicente Olarte Camacho appeared in 1911.³ It covers all the agreements Peru and Colombia had had as of that year. A similar work by Luis Ulloa, a Peruvian, was published in the same year. The latter criticizes as fraudulent the Pedermonite-Mosquera Protocol of 1870.⁴

An official Colombian Senate publication upholds, with impressive documentation, Colombia's claims to the Putumayo River.⁵

A contentious article by Carlos Larrabure y Correa, a Peruvian, appeared in the South American supplement of the London *Times* for July 1873. The article is a reply to a letter of May 27, 1873, by the Colombian chargé d'affaires in London. The article and the letter, including a rejoinder to the letter, may be found in a British publication authorized by the Colombian government.⁶

The events related to the 1922 Treaty on Boundaries and Navigation as well as those events leading to the treaty's 1928 ratification are treated in several works among which are those of Antonio José Uribe,⁷ a Colombian. Others include an analytical study by Carlos A. Valverde,⁸ Peruvian deputy. Incorporated in this study are the pertinent speeches delivered in Congress by Valverde. Another

¹ *Proyectos de tratados entre las Repúblicas del Perú y los Estados Unidos de Colombia*. Lima, Impr. del Estado, 1870. 37 p.

² Paz Soldán, Carlos. *Los negociadores diplomáticos peruanos y colombianos desde 1821 hasta 1830*. Lima, Impr. Liberal, 1907. 24 p.

³ Olarte Camacho, Vicente. *Los convenios con el Perú*. Bogotá. Impr. Electrica, 1911. 308 p.

⁴ Ulloa, Luis. *Algo de historia. Las cuestiones territoriales con Ecuador y Colombia y la falsedad del Protocolo Pedemonte-Mosquera*. Lima, 1911.

⁵ *La soberanía de Colombia en el Putumayo. Documentos que se publican de orden del Senado de la República Colombiana*. Ed. oficial. Bogotá, Impr. Nacional, 1912. 62 p.

⁶ Thomson, Norman. *Colombia and Peru in the Putumayo territory; a reply to the defence of the Peruvian government*. Translated by F. L. Rudston Brown. London, N. Thomson & Co. [1914] 48 p.

⁷ Uribe, Antonio José. *Colombia y el Perú; el Tratado de Límites y Navegación Fluvial de 1922, unión de las naciones amazónicas, la cooperación económica*. Bogotá, Impr. Nacional, 1928. 43 p.

———. *Colombia y el Perú, las cuestiones de límites y de libre navegación fluvial*. Bogotá, Edit. Minera, 1931. 455 p.

⁸ Valverde, Carlos A. *Por la paz de América. El Tratado de Límites Salomón-Lozano entre el Perú y Colombia*. Lima, Tall. de la Prensa, 1928. 152 p.

legal study by A. Muñoz Vernaza,⁹ an Ecuadorean jurist and diplomat, compared the 1922 Peruvian treaty with the 1916 Ecuador-Colombia treaty which he had helped negotiate. Two more critical and analytical works by Evaristo San Cristóval,¹⁰ a Peruvian, forcefully argue in favor of Peru and are presented together with documentation covering a century-long span up to 1922.

The 1922 treaty and the legal and technical problems involving Leticia are likewise dealt with in a monograph bearing a 1932 imprint date.¹¹ The Leticia problem is also treated in a two-edition Foreign Ministry publication from Colombia.¹² This particular problem attracted a great deal of scholarly attention and became a favorite theme of various individual and corporate writers in different countries especially in the years 1933 and 1934. These individual or corporate authors include Jacinto López,¹³ Gaspar de las Casas,¹⁴ José Santos Chocano,¹⁵ the Lima Bar Association,¹⁶ Nicolás F. López,¹⁷ and Fabio Lozano Torrijos.¹⁸ Dr. Lozano Torrijos also published a commentary¹⁹ about the Royal Cédula of 1802 on which some of the contentions as to boundaries were based.

The events leading up to the intervention of the League of Nations in 1933,

⁹ Muñoz Vernaza, A. *Exposición sobre el Tratado de Límites de 1916 entre el Ecuador y Colombia, y análisis jurídico del Tratado de Límites de 1922 entre Colombia y el Perú*. [Quito] Tall. Tip. de El Comercio, 1928. 102 p.

¹⁰ San Cristóval, Evaristo. *Los desastres internacionales de la dictadura (Tradado con Colombia)* [Lima] Impr. Enrique Palacios [1928?] 128 p.

———. *Páginas internacionales. Antecedentes diplomáticos del tratado Salomón-Lozano*. [1.ed.?] 2.ed. Lima, Libr. é Impr. Gil, S.A., 1932. 246 p.

¹¹ *El tratado Salomón-Lozano y la cuestión de Leticia*. Lima. Libr. é Impr. San Cristobál, 1932. 112 p.

¹² *El conflicto de Leticia*. Bogotá, Edit. Minerva, 1934. 103 p.: 2.ed. 1934. 254 p.

¹³ López, Jacinto. *Lecciones del conflicto entre Colombia y el Perú resultante del tratado secreto de 1922. La conferencia de Rio de Janeiro*. [New York, Carlos López Press, 1933] 28 p.

———. *Los tratados de límites y la paz internacional americana, el tratado secreto de 1922 entre Colombia y el Perú*. Lima, Esc. Tip. Salesiana, 193-? 41 p.

¹⁴ Casas, Gaspar de las. *Un scandale diplomatique; le traité Salomon-Lozano*. Paris [Fontenay-aux-Roses, Impr. L. Bellenaud et Fils] 1933. 155 p.

¹⁵ Santos Chocano, José. *El escándolo de Leticia ante la conferencia de Rio de Janeiro*. Santiago de Chile, Tall. Gráf. de la Nación, 1933. 68 p.: 2.ed. 1934. 91 p.

¹⁶ *Exposición del Colegio de abogados de Lima sobre los motivos jurídicos de la revisión del tratado de límites celebrado por el Perú y Colombia el 24 de marzo de 1922*. Lima, Impr. Hispano-América, 1933. 98 p.

¹⁷ López, Nicolás F. *Estudios internacionales sobre el conflicto colombo-peruano*. Quito, Tall. Gráf. Nacionales, 1934. 168 p.

¹⁸ Lozano Torrijos, Fabio. *El Tratado Lozano-Salomón*. México, Edit. Cultura, 1934. 616 p.

¹⁹ ———. *La Cédula de 1802*. Quito, Impr. Nacional, 1936. 56 p.

such as Brazil's friendly offers to mediate, the open hostilities between Peru and Colombia, the diplomatic notes from the United States and the League, and the 1934 Rio de Janeiro Protocol are all commented upon and documented in several published works. The Colombian delegate to the League printed for public dissemination a lengthy address on the subject.²⁰ The League policies and official verdict appeared in both Spanish and English.²¹ Colombian official texts of the Rio de Janeiro Protocol and related documents were printed in 1934²² and 1935²³ and formed the basis of works by Ignacio Escallón²⁴ and Diego Luis Córdoba.²⁵

A general reference work particularly on the Leticia affair was published in English²⁶ and Spanish²⁷ and contains the learned opinions of distinguished authorities on international law, including Raymond Poincaré, Alejandro Alvarez, Francisco L. de la Barra, Lester H. Woolsey, Eugene Borel, and Luis Anderson. A researcher might possibly use this general work together with a later edition of the Peru-Colombia boundary treaty.²⁸

²⁰ *Un gran triunfo de Colombia; los derechos de Colombia y la actitud del gobierno del Perú, juzgados por la Sociedad de Naciones y los Estados Unidos de América. Documentos publicados por la legación de Colombia en España.* Madrid. Impr. de J. Pueyo, 1933. 102 p.

²¹ League of Nations. *Dispute between Colombia and Peru. Colombia's appeal under Article 15 of the Covenant.* [Geneva] 1933. 15 p.

———. *The verdict of the League. Colombia and Peru at Leticia; the official documents with notes and introduction by Manley O Hudson.* Boston. World Peace Foundation, 1933. 88 p.

²² *Protocolo de Rio de Janeiro. Texto de protocolo. Proyecto de ley y exposición de motivos.* Bogotá, Impr. Nacinal, 1934. 31 p.

²³ ———. *Documentos relativos a su aprobación.* Bogotá. Impr. Nacional 1935. 106 p.

²⁴ Escallón, Ignacio. *Proceso histórico del conflicto amazónico.* Bogotá, Edit. Nueva, 1934. 284 p.

²⁵ Córdoba, Diego Luis. *El debate sobre el Protocolo de Rio de Janeiro en la Cámara.* Bogotá, Impr. Nacional, 1936. 87 p.

²⁶ *International opinion and the Leticia controversy: views of outstanding internationalists on the situation created by the seizure of Leticia, a Colombian port on the Amazon River by a group of Peruvians on September 1, 1932.* Washington, D.C., Colombian Legation, 1933. 120 p.

²⁷ *La opinión internacional y el conflicto de Leticia; conceptos de los más altos internacionalistas de Europa y América sobre la situación creada por la captura de Leticia, puerto colombiano sobre el río Amazonas, por el grupo peruano en la madrugada del 1° de setiembre de 1932.* Washington, D.C., Legación de Colombia, 1933. 131 p.

²⁸ *Arreglo de límites entre la República de Colombia y la República del Perú.* [Bogotá] Edit. de la Lit. Colombia-Bogotá [1941] 39 p.

Peru and Ecuador

The boundary dispute between these two countries began when Ecuador was still territorially part of Colombia. Quite naturally the issue stemmed originally from certain incidents surrounding the boundary dispute between Peru and Colombia.

Following Peru's proclamation of independence from Spain, she convoked a constituent congress in Lima to which she invited delegates from the Ecuadorean districts of Quijos and Maynas. This invitation was looked upon by Colombia as an affront to her sovereignty; Colombia contended that the territories in question had formed part of the Audiencia de Quito, in the viceroyalty of New Granada, and were, therefore, within the jurisdiction of the Republic of Gran Colombia.

July 15, 1822, marks the first attempt at a negotiated settlement of the Peru-Colombian dispute. On that date, the Mosquera-Monteaguido Treaty was signed pursuant to which the parties stipulated that the demarcation of boundaries shall be undertaken by special agreement. Subsequently, such a special agreement, which preserved the boundary lines as they had existed between the viceroyalties of Peru and New Granada, was concluded in 1823 but was, however, rejected by Colombia.

When amicable discussion and negotiations between Peru and Colombia failed, war between the two became inevitable. In the resulting conflict Peruvian troops were defeated at Tarqui. Despite this setback, however, Peru managed to retain possession of the Ecuadorian province of Guayaquil which the Peruvian forces had seized earlier in the struggle. At the conclusion of the hostilities, a provisional treaty signed February 28, 1829, in Guayaquil provided for the creation of a boundary commission. On September 28, 1829, a definitive treaty of peace and amity was concluded under articles 5 and 6 in which it was once again agreed that the boundaries which existed between the ancient viceroyalties of New Granada and Peru would be maintained except for some minor changes. Eventually, a commission was created to draw up the demarcation lines, but its work met with an unexpected snag. Ecuador decided to secede from Colombia. After attaining an independent status in 1830 Ecuador proceeded in its own right as a sovereign nation to establish relations with Peru.

When Ecuador was still part of Colombia, the latter's boundary conflict with Peru centered principally around the provinces of Jaén and Maynas. It was not surprising therefore that after the establishment of relations between Ecuador and Peru, trouble over the same provinces arose almost immediately. Triggering the controversy was the appointment of Ecuadorean bishops to these provinces.

Peru protested these appointments until Ecuador consented to withdraw them.

In a treaty negotiated and entered into in Lima, on July 12, 1832, the two countries agreed that the provinces of Jaén and Maynas were to remain in Peru's possession. Between 1832 and 1887, no other agreements were reached, although the question of boundaries was repeatedly argued and negotiated, and hostilities broke out more than once between the two countries. During this interim, Ecuador pleaded the doctrine of *uti possidetis*, according to which the boundaries to be observed were those which had existed on the eve of Ecuador's independence from Spain in 1810. At that time, Jaén and Maynas had formed part of the province of Quito. On the other hand, the Peruvians based their territorial claims on the Royal Decree of July 15, 1802,¹ which had created a Comandancia General de Maynas in the province of Loreto in Peru.

Sometime in 1887 Ecuador attempted once again to exercise sovereign rights over the disputed territories by ceding part of Maynas to British creditors. Peru protested as usual. The following year both countries submitted the problem to arbitration by the Spanish crown. Arbitration proceedings were duly conducted in the following years until 1890 when another attempt at direct negotiations resulted in still another treaty. The treaty was, however, rejected in 1894, and the Spanish crown's arbitration, which had to be suspended pending the treaty negotiations, was resumed. In that year, Colombia sought and was granted permission to take part in the proceedings.

On November 5, 1904, special questions involving Colombia and Ecuador were submitted to the emperor of Germany as arbitrator. In the following year, however, the arbitration through the good offices of the German emperor was suspended pending the outcome of the Spanish crown's mediation between Peru and Ecuador.

In 1910 Ecuador, anticipating an unfavorable decision, committed acts of aggression against Peru. As a result, the king of Spain withdrew as arbiter and refused to make an award in the dispute. Several years later, Ecuador and Peru agreed under the Ponce-Castro Oyanguren Protocol of June 21, 1924, to refer their dispute to the United States should direct negotiations fail. On July 16, 1936, they implemented the 1924 protocol and brought the matter before President Franklin D. Roosevelt. Conferences began in Washington, D.C., on September 30 of the same year.

On January 29, 1942, Peru and Ecuador subscribed to the Protocol of Peace,

¹ *Real Cédula al Virrey del Perú, Comandancia General de Maynas, de 15 de julio de 1802.*

Friendship, and Boundaries, executed in Rio de Janeiro.² Negotiated under the auspices of the Third Consultative Meeting of Foreign Ministers of the American Republics, the protocol set forth in detail the exact line of demarcation to be drawn, and as usual provided for the appointment of a commission of experts to implement the demarcation process. The mixed demarcation commission which was duly constituted commenced its work on June 1, 1942. In 1950, as it was about to terminate its work, Ecuador claimed the discovery of a new watershed, as a result of which the commission had to cease functioning. In 1951 sporadic hostilities broke out anew between the Peruvian and Ecuadorean forces on the border and continued through 1952. Three years later, the Organization of American States (OAS) requested the four guarantor nations (Argentina, Brazil, Chile, and the United States) under the Rio de Janeiro Protocol to investigate Ecuador's complaint that there was a concentration of Peruvian troops on the border. The guarantors' investigation, however, revealed the situation to be normal. In 1960 Ecuador reiterated the same complaint and unilaterally rejected the Rio de Janeiro Protocol. Once again the diplomatic relations between the two countries were terminated. The guarantor nations suggested that the matter be referred to the International Court of Justice at The Hague. Ecuador accepted the proposal, but Peru rejected it. Finally, the guarantors, in a December 1960 communique to Ecuador, upheld the validity of the Rio de Janeiro Protocol. With the resumption of diplomatic relations in 1964, the bitterness subsided paving new grounds for future negotiations. As of early 1972, however, the boundary question appears far from resolved.

One of the earliest contributions to literature on this subject is of Peruvian imprint.³ It relates to the negotiations between the diplomatic representatives of Peru and Ecuador, their correspondence, exchange of documents, and papers. Bound with this work are two others dealing substantially with the same matters. One is by Manuel Nicolás Corpancho,⁴ and the other by Modesto Basadre.⁵ The latter work is actually a response to or an attempted refutation of the work

² *Peace, Friendship, and Boundaries Between Peru and Ecuador, Protocol . . . signed at Rio de Janeiro, January 29, 1942*. Washington. U.S. Gov. Print. Off., 1943. 7 p. (Executive Agreement Series. No. 288)

³ *Conferencias y comunicaciones tenidas en Quito entre los ministros plenipotenciarios del Perú y el Ecuador nombrados para transijir las diferencias que existen entre una y otra república*. Lima. Impr. del Estado, 1842. 113 p.

⁴ Corpancho, Manuel Nicolás. *Perú y Ecuador. Cuestión internacional*. Lima. Impr. de J. Enrique del Campo, 1861. 98 p. [Bound with: *Conferencias y comunicaciones . . .*]

⁵ Basadre, Modesto. *Refutación documentada del folleto titulado, Cuestión de límites entre el Ecuador y el Perú . . .* [1.ed.?] 2.ed., aum. Lima. Est. Tip. de Aurelio Alfaro, 1860. 226 p. [Bound with: *Conferencias y comunicaciones . . .*]

of Pedro Moncayo,⁶ an Ecuadorean patriot.

A compilation showing a cross-section of Peruvian views and editorials on the boundary question appeared in 1891.⁷

In Ecuador Luciano Coral produced two works,⁸ one of which consists of documentary materials existing as of 1893. A brief paper⁹ critical of the 1891 protocol appeared in 1894. Five years later the Ecuadorean boundary arguments were reviewed and set forth in detail by Camilo Destruge.¹⁰

An exhaustive study of the boundary controversy appeared in the early 1900's.¹¹ In the first two volumes of this work, Enrique Vacas Galindo, its author, reproduced the texts of every conceivable documentary source material, including the earliest Spanish and Portuguese legislation, concerning the provinces or territories affected in the continuing dispute. A third volume, which the author issued under a different title that is indicative of the nature of its contents, contains Dr. Vacas Galindo's views and those of other Ecuadoreans as well. Altogether these views present an excellent historical perspective dating back to the time of Christopher Columbus. Dr. Vacas Galindo is also the author of two other monographs on the same subject.¹²

After publishing a historical-juridical treatment of the controversy¹³ as it existed in 1904, Honorato Vásquez followed through with three other works dealing specifically with the legal briefs presented by either side of the king of Spain as arbiter.¹⁴

⁶ Moncayo, Pedro. *Cuestión de límites entre el Ecuador i el Perú según el uti possidetis de 1810 y los tratados de 1829*. Santiago de Chile, Impr. Nacional, 1860. 62 p.

⁷ *El Tratado de Límites del Perú con el Ecuador. Defensa de los intereses peruanos sostenida por El Diario Judicial de Lima*. Lima, Impr. de El Diario Judicial, 1891. 24 p.

⁸ Coral, Luciano. *Ecuador y Perú. Documentos importantes*. Guayaquil, 1893.

———. *Conflicto internacional (Ecuador y Perú)*. Guayaquil, Impr. de El Tiempo, 1894. 288 p.

⁹ Fernández, Constantino. *Refutación al Tratado Herrera-García*. Ambato, 1894.

¹⁰ Destruge, Camilo. *El Ecuador y el Perú, en su cuestión [de] límites*. Guayaquil, Tip. Guayaquil, 1899. 80, xxvi p.

¹¹ Vacas Galindo, Enrique. *Colección de documentos sobre límites ecuatoriano-peruanos*. Quito, Tip. de la Escuela de Artes y Oficios, 1902-03. 3 v. [V. 3: *Exposición sobre los límites ecuatoriano-peruanos*]

¹² ———. *La integridad territorial de la República del Ecuador*. Quito, 1903.

———. *Resúmen de la cuestión de límites Ecuador con el Perú*. Madrid, Impr. del Asilo de Huérfanos del S.C. de Jesús, 1909. 72 p.

¹³ Vásquez, Honorato. *Memoria histórico-jurídico sobre límites ecuatoriano-peruanos*. Quito, Impr. Nacional, 1904. 300 p.

¹⁴ ———. *Exposición ante S.M. Don Alfonso XIII en la demanda de la República del Ecuador contra la del Perú sobre límites territoriales*. Madrid, Est. Tip. Suc. de Rivadeneyra, 196. 525 p.

———. *El memorandum final del Perú. Contra-memorandum*. Madrid, Est. Tip. Suc. de Rivadeneyra, 1909. 58 p.

In 1905 and 1906 the heated controversy had somewhat cooled off as a result of a *modus vivendi* agreed to by the parties pending the outcome of the Spanish crown's arbitration efforts. During this period, a great number of works were published. Among those printed in 1905 are a small volume by Pedro Cornejo¹⁵ who provides his personal views together with some historical insights; an item by Luis Chacón treating extensively of Ecuadorean arguments;¹⁶ and a third work consisting of a brief critique by J. Canalejas y Méndez.¹⁷

In Spain in 1906, the Marqués de Olivart, the well-known internationalist and statesman, wrote on the ancient Colombia-Peru dispute, explaining in detail how this was to become the prologue to the present controversy.¹⁸ Two years later the same author published a legal opinion¹⁹ on the status as of that date of Peru's boundary relations with Ecuador itself. A legal opinion, also published in 1906 in Spain, came from the pen of Bienvenido Oliver y Esteller,²⁰ formerly a judge of the arbitration court at The Hague.

Among other works of 1906, we have Judge Antonio D. Maura y Montaner's defense of Ecuador's position²¹ and a similar work by Dr. Moncayo,²² a fellow Ecuadorean jurist; a two-volume presentation of Ecuador's case²³ as it was presented to the king of Spain; and Peru's presentation of its side²⁴ as it was handled by six of its jurists, Eugenio Montero Ríos, G. de Azcárate, Rafael M. de Labia,

———. *Litigio de límites entre el Ecuador y el Perú*. Madrid, Suc. de Rivadeneyra, 1907. 193 p.

¹⁵ Cornejo M., Pedro. *El Ecuador y el Perú, ó sea algo acerca de los límites que deben separar a éstas repúblicas*. Quito, Tip. de la Esc. de Artes y Oficios, 1905. 153 p.

¹⁶ Chacón, Luis Antonio. *Apuntaciones para el estudio de límites del Ecuador con el Perú*. Guayaquil, 1905. 181 p.

¹⁷ Canalejas y Méndez, J. *Límites entre las Repúblicas del Ecuador y Perú (dictámen)*. Madrid, Est. Tip. Suc. de Rivadeneyra, 1905. 73 p.

¹⁸ Olivart, Ramón de Dalmán y de Olivart, marqués de. *La frontera de la antigua Colombia con el Perú. Contribución al estudio de la cuestión de límites entre el último y el Ecuador*. Madrid, Est. Tip. Suc. de Rivadeneyra, 1906. 327 p.

¹⁹ ———. *Algo más acerca de la frontera ecuatoriano-peruana (dictámen jurídico)*. Madrid, 1908.

²⁰ Oliver y Esteller, Bienvenido. *Determinación del territorio de la República del Ecuador confinante con el de la República del Perú. Dictámen en derecho*. Madrid, Est. Tip. Suc. de Rivadeneyra, 1906. 395 p.

²¹ Maura y Montaner, Antonio D. *Defensa de los derechos de la República del Ecuador en su contienda con la República del Perú*. Quito, 1906: another ed. 1906. 116 p.

²² Moncayo, Pedro. *Cuestión de límites entre el Ecuador y el Perú*. Quito, 1906.

²³ Fernández Prida, Joaquín. *Exposición ante S.M. Alfonso en la demanda de la República del Ecuador contra el Perú sobre límites territoriales*. Madrid, 1906. 2 v.

²⁴ *Los límites territoriales de la República del Perú y el Ecuador. Dictámen jurídico*. Madrid, Est. Tip. de Fortanet, 1906.

Nicolás Salmerín y Alonso, Eduardo Dato, and Rafael Conde y Luque.

Much of the literature, including some already cited, treats principally of the legal briefs filed at one time or another by the arbitration litigants. This type of literature includes several compilations. The arbitration briefs for Peru as presented by José Pardo y Barreda were published in three volumes.²⁵ The official documents supporting the Peruvian brief as submitted by Mariano H. Cornejo and Felipe de Osma, Peruvian representatives, were published in Spain in seven volumes,²⁶ plus a one-volume index. The brief as it was finally submitted was printed separately.²⁷

In 1909 and 1910 the works of the Spanish jurists and experts who had acted as counsels during the arbitration proceedings were collected in two volumes.²⁸ The documents in these works include, among others, both Peru's and Ecuador's litigation papers.

On January 30, 1910, a pamphlet critical of the direction in which the arbitration was heading was distributed to the people of Ecuador by its Foreign Ministry.²⁹ Designed to enlist public support for the government's stand on the issues, the pamphlet provoked an immediate reaction in Peru in the form of a written rebuttal³⁰ from no less a personage than the distinguished Peruvian internationalist, Carlos Paz Soldán. It was at about this time that Alfonso XIII, king of Spain, withdrew as arbiter because of some acts of aggression committed by Ecuador against Peru. It was also at about this time that an Ecuadorean diplomat published in Washington a resumé in English³¹ on the whole controversy, a move aimed at kindling U.S. sympathies for Ecuador.

²⁵ *Alegato del Perú en el arbitraje sobre sus límites con el Ecuador, presentado por José Pardo y Barreda* . . . Madrid, M.G. Hernández Hijos, 1905. 200 p.; *Documentos anexos* . . . Madrid, 1905. 2 v.

²⁶ *Documentos anexos á la memoria del Perú presentados á S.M. el Real Arbitro por D. Mariano H. Cornejo y D. Felipe de Osma*. Madrid, Impr. de los Hijos de M. G. Hernández, 1905-6. 7 v.

———. *Indice de la defensa peruana*. Madrid, Impr. de los Hijos de M. G. Hernández, 1907. 1 v.

²⁷ *Memorandum final presentado por los Plenipotenciarios del Perú don Mariano H. Cornejo y Don Felipe de Osma, en el litigio de límites con el Ecuador*. Madrid, Impr. de los Hijos de M. G. Hernández [1909] 25 p.

²⁸ *Litigio de límites entre el Ecuador y el Perú*. Madrid, Est. Tip. de El Liberal, 1909-10. 2 v. in 1.

²⁹ *Cuestión de límites con el Perú*. Quito, Impr. y Enc. Nacionales, 1910. 100 p.

³⁰ Paz Soldán, Carlos. *La cuestión de límites. Refutación al folleto oficial publicado por orden de la Cancillería Ecuatoriana*. Lima, Impr. Liberal, 1910. 17 p.

³¹ Flores y Caamaño, Alfredo. *A resumé of the boundary controversy*. Washington, D.C., Byron S. Adams, 1910. 14 p.

Additional items on the boundary dispute published originally in 1910 are a so-called exposé³² by a nationalistic organization headed by Luis Felipe Borja in Quito; a concise and fully documented statement³³ on the issue presented by an Ecuadorean diplomat to Bolivia (third and fourth editions of the publication carry both Spanish and English texts); an extensive study by Vicente Santamaría de Paredes,³⁴ Ecuadorean statesman and professor of law, which originally appeared in Spanish in 1907 and was translated into English in 1910 by Harry Weston Van Dyke; and lastly, a less extensive study by Aníbal Maúrtua, writing under the pseudonym Américo Latino.³⁵

Peru's claims and arguments in support thereof with reference to the long litigation with both Colombia and Ecuador are excellently stated in a lengthy position paper by Luis Ulloa.³⁶

In the twenties there were five noteworthy Ecuadorean contributions. The first, a dissertation submitted in partial fulfillment of requirements for a degree of doctor of philosophy at Columbia University in New York, dealt with the continuing controversy.³⁷ This thesis was written by Pastoriza Flores, an Ecuadorean who had been awarded a Curtis University scholarship to Columbia. The second is a brochure on the 1924 protocol³⁸ issued by Nicolás F. López, apparently another Ecuadorean. The third is a book by José Peralta used as a textbook by Ecuadorean schools offering courses on boundary disputes.³⁹ This textbook is based on a situation report made by the author in 1920 while he was a foreign service officer representing Ecuador on a mission to Peru sometime during the litigation years. The fourth is another doctoral dissertation, and the fifth, another textbook for Ecuadorean schools. The dissertation was

³² *Manifiesto de la Junta patriótica nacional*. [1.ed.?] 2.ed. Quito, Impr. y Enc. Nacionales, 1910. 18 p.

³³ Ponce, N. Clemente. *Límites entre el Ecuador y el Perú*. La Paz, Impr. y Lit. Boliviana, 1910. 90 p.; 2.ed. 1915. 122 p.; 3.ed. 1921. 124 p.; 4.ed. 1936. 128 p.

³⁴ Santamaría de Paredes, Vicente. *Estudio de la cuestión de límites entre las repúblicas del Perú y el Ecuador*. Madrid, Impr. de los Hijos de M. G. Hernández, 1907. 307 p.

———. *A study of the question of boundaries between the Republics of Peru and Ecuador*. Translated by Harry Weston Van Dyke. Washington, D.C., Byron S. Adams, 1910. 336 p.

³⁵ Maúrtua, Aníbal. *La cuestión de límites entre el Perú y el Ecuador por Américo Latino*. Buenos Aires, J. E. Hall y Cía., 1910. 93 p.

³⁶ Ulloa, Luis. *Algo de Historia*. Lima, Impr. La Industria, 1911. 1 v.

³⁷ Flores, Pastoriza. *History of the boundary dispute between Ecuador and Peru*. New York, 1921. 82 p.

³⁸ López, Nicolás F. *Cuestiones de actualidad. Protocolo Ponce-Castro Oyanguren*. Quito, Edit. Artes Gráficas, 1924. 20 p.

³⁹ Peralta, José. *Breve exposición histórico-jurídico de nuestra controversia de límites con el Perú. Por la Junta administrativa de la Universidad*. Cuenca, 1925. 112 p.

submitted by José María Egas M.⁴⁰ to the University of Guayaquil in 1927 and later in 1933 was reprinted in several issues of the *University Review*; the textbook came from the pen of Francisco de Paula Soria.⁴¹

From 1936 to 1942 there was a noticeable increase in the number of contributions on the boundary question due largely to the renewed negotiations being held under the auspices of President Franklin D. Roosevelt pursuant to the 1924 protocol subscribed to by Peru and Ecuador.⁴² A historical sketch covering the period from 1910 to 1936 appeared in Spanish⁴³ and English.⁴⁴ José Ricardo Chiriboga V.,⁴⁵ Ecuadorean secretary to the Junta Consultiva Permanente (Permanent Board of Consultation), and Fabio Lozano Torrijos,⁴⁶ who was Colombian ambassador to the United States, wrote legal opinions in 1936 upholding Ecuador's contentions. One of Peru's briefs, dated August 9, 1937, which was presented to the Washington arbitration conference was published in Spanish⁴⁷ and English.⁴⁸

There are other publications, both official and unofficial, also dealing with the Washington negotiations. Ecuador's Foreign Ministry issued a volume covering the events and developments from September 1936 to July 1937,⁴⁹ and an eight-page pamphlet summarizing the controversy.⁵⁰ Another pamphlet

⁴⁰ Egas M., José María. *El principio del uti possidetis americano y nuestro litigio de fronteras con el Perú*. Guayaquil, Impr. Municipal [1927] 149 p.

⁴¹ Soria, Francisco de Paula. *Lecciones graduadas sobre límites del Ecuador con el Perú*. Quito, Impr. América, 1928. 72 p.

⁴² *Protocolo firmado en Quito por los excelentísimos señores . . . N. Clement Ponce, Ministro de Relaciones Exteriores del Ecuador, y . . . Enrique Castro Oyanguren, enviado extraordinario y ministro plenipotenciario del Perú*. Quito, Tall. Tip. Nacionales, 1935. 50 p.

⁴³ *Cuestión de límites entre el Perú y el Ecuador. Reseña histórica desde 1910*. Lima, Impr. Torres Aguirre, 1936. 49 p.

⁴⁴ *The question of the boundaries between Peru and Ecuador, a historical outline covering the period since 1910*. Baltimore, Reese Press, 1936. 66 p.

⁴⁵ Chiriboga V., José Ricardo. *Memorándum sobre límites entre el Ecuador y el Perú*. Quito, Impr. Nacional, 1936. 38 p.

⁴⁶ Lozano Torrijos, Fabio. *Límites entre el Ecuador y el Perú*. Quito, 1936.

⁴⁷ *Conferencia de Washington para la cuestión de límites entre el Perú y el Ecuador. Réplica de la delegación peruana a la contraproposición ecuatoriana del 9 de agosto de 1937*. [Washington, 1937?] 13 p.

⁴⁸ *The question of the boundaries between Peru and Ecuador. Reply of the Peruvian Delegation to the Ecuadorean document of August 9, 1937*. Baltimore, Reese Press, 1937. 14 p.

⁴⁹ *Las negociaciones ecuatoriano-peruanas en Wáshington*. Ed. reservada. Quito, Impr. del Ministerio de Gobierno, 9137. 240 p. (Ministerio de Relaciones Exteriores. Sección de Límites)

⁵⁰ *Resumen del litigio fronterizo entre el Ecuador y el Perú. Summary of the boundary controversy between Ecuador and Peru*. Quito, Edit. Artes Gráf., 1938. 8 p. (Publicaciones de la Cancillería Ecuatoriana. Dirección de Límites)

on the Washington negotiations was also published by Ecuador's delegation.⁵¹ Lastly, in 1939, Enrique Arroyo Delgado updated, with pertinent notes and comments, the 1937 Ecuadorean Foreign Ministry's documentation of the developments arising from the United States' mediation.⁵²

In 1941 several more items appeared, such as Dr. Eguiguren's bilingual recapitulation⁵³ of the colonial background of the dispute which was published with individual volumes treating of the provinces of Maynas and Jaén separately; Peru's official stand, as stated by its foreign minister and chairman of the Peruvian delegation to the Washington conference, Francisco Tudela;⁵⁴ and an official report⁵⁵ by Roberto MacLean y Estenós, a Peruvian congressman serving on the Congressional Diplomatic Committee; a printed copy of MacLean y Estenós' parliamentary address⁵⁶ delivered in direct rebuttal of an Ecuadorean diplomatic note asserting Ecuador's rights over the provinces of Tumbes, Jaén, and Maynas; and finally, a study by Luis Humberto Delgado,⁵⁷ which contains an interesting report made in 1934 by Col. Oscar H. Ordóñez, an engineer who at that time was serving as provincial commander of the Amazonic region.

Three years after the signing of the Rio de Janeiro Protocol,⁵⁸ which temporarily terminated the raging controversy, two Ecuadoreans, Julio H. Santamaría⁵⁸ and Jorge W. Villacres Moscoso,⁵⁹ wrote retrospectively on the tragedy, in what may be said to be clearly recriminatory and partisan articles, seeking to place responsibility for it.

⁵¹ *Ecuadorean-Peruvian boundary negotiations. Ecuador insists upon her proposal to submit the entire controversy to arbitration juris by the President of the United States of America.* Baltimore, Reese Press, 1938. 16 p.

⁵² Arroyo Delgado, Enrique. *Las negociaciones limítrofes ecuatoriano-peruanas en Washington, 1936-1938.* Quito, Edit. de El Comercio, 1939. 244 p.

⁵³ Eguiguren, Luis Antonio. *Apuntes sobre la cuestión internacional entre el Perú y Ecuador.* Lima, Impr. Torres Aguirre, 1941-43. 2 v. [English title: *Notes on the territorial question between Perú and Ecuador*]

⁵⁴ Tudela, Francisco. *The controversy between Peru and Ecuador.* Lima, Impr. Torres Aguirre, 1941. 46 p.

⁵⁵ MacLean y Estenós, Roberto. *El litigio limítrofe peruano-ecuatoriano.* Lima, Compañía de Impresiones y Publicidad, 1941. 30 p.

⁵⁶ ———. *Peruanidad de Tumbes, Jaén, y Maynas.* Lima, 1941. 32 p.

⁵⁷ Delgado, Luis Humberto. *Comentarios históricos. Nuestra situación internacional.* Lima, Latino América, 1941. 75 p.

⁵⁸ Santamaría, Julio H. *La tragedia internacional del Ecuador y sus responsables.* Quito, Impr. Mercantil, 1945. 64 p.

⁵⁹ Villacres Moscoso, Jorge W. *La responsabilidad de la diplomacia ecuatoriana en la demarcación fronteriza.* Guayaquil, Impr. de la Universidad, 1945. 61 p.

Treaties

In 1947 an inter-American system of collective security was initiated with the signing of the Inter-American Treaty of Reciprocal Assistance, familiarly called the Rio Treaty. In the following year, this treaty was bolstered and completed by the American Treaty of Pacific Settlement, known simply as the Pact of Bogotá. The Rio Treaty is concerned principally with organized inter-American enforcement measures for the maintenance or restoration of peace, and the Pact of Bogotá is basically concerned with the procedural aspects of pacific settlement of disputes arising from the failure of concerted hemispheric action.¹

Like any other modern sovereign nation, Peru's foreign relations involved not only matters of peace but also cooperation in the fields of education, technology, labor, agriculture, commerce and industry, criminal law, and many others, which are negotiated through agreements, protocols, and treaties.

Generally, these international agreements or acts are published in the annual reports (memorias) of Peru's Foreign Ministry. The signing or ratification of a treaty is also published in *El Peruano*, the government's official organ. However, there are a number of collections of treaties, conventions, and pamphlet editions of the same.

The two earliest treaty collections located bear the title *Registro oficial*.² A great portion of the seventh volume of Juan Oviedo's 1862 collection of laws is devoted to reprints of the principal treaties and conventions entered into by Peru between 1821 and December 31, 1859.³ In 1876 Peru's undersecretary of foreign relations issued an official compilation of treaties.⁴

One of the most extensive works in the particular field is Ricardo Aranda's 14-volume collection⁵ of Peru's entire range of diplomatic negotiations and agreements from 1821 to 1910, inclusive. An introductory chapter to this com-

¹ Thomas, Ann (Van Wynen), and A. J. Thomas, Jr. *The Organization of American States* . . . Dallas, Southern Methodist University Press, 1963. pp. 218-219.

² *Registro oficial. Colección diplomática, ó reunión de los tratados por el Perú con las naciones extranjeras desde su independencia hasta la fecha*. Lima, Impr. por Francisco Solís, 1854.

———. *Año de 1858*. Impr. de Eusebio Aranda, 1858. 347 p.

³ Oviedo, Juan. *Colección de leyes, decretos, y órdenes publicados en el Perú desde el año de 1821*. . . . Tomo VII. Ministerio de relaciones exteriores. Lima, 1862.

⁴ *Colección de los tratados del Perú*. Publicación oficial. Lima, Impr. del Estado, 1876. 352 p.

⁵ Aranda, Ricardo. *Colección de los tratados, convenciones, capitulaciones, armisticios y otros actos diplomáticos y políticos, celebrados desde la independencia hasta el día*. Lima, 1890-1911. 14 v.

pilation provides an interesting insight into the country's international relations during the colonial period. Dr. Aranda is also compiler and editor of a comprehensive collection on international and inter-American congresses which was published by Peru's Foreign Ministry.⁶ In 1907 Carlos Wiese followed suit with an excellent compilation of treaties.⁷

There are other works published either by the Foreign Ministry itself or through its officers. A Foreign Ministry pamphlet contains all international agreements in force as of January 1, 1892.⁸ These agreements are arranged alphabetically by country and chronologically within each country. Brief explanatory notes and citations to sources are provided. A similar type of material appeared in 1905.⁹ Alfredo Benavides y Diez Canseco, chief of the diplomatic section of the ministry, issued a methodically arranged collection.¹⁰ It has a thumb-index and an index of nations, as well as chronological and subject indexes. It covers ministry publications, also with excellent indexes and consisting of two volumes which appeared in 1936.¹¹ The first contains bilateral agreements, and the second, multilateral instruments. There are three supplementary volumes to this work.

In 1942 printed texts of Peru's trade treaty with the United States, including related documents and covenants, were published by the Larrabure Press in Lima.¹²

Two other contributions are those by Jorge Castro Harrison and Enrique González Dittoni, which came out in 1960 and 1962, respectively. The first contains a mimeographed, unannotated text of the cultural agreements of Peru with other countries.¹³ The other carries the unannotated texts of Peru's multilateral and bilateral treaties, including border treaties with Bolivia, Brazil,

⁶ ———. *Congresos y conferencias internacionales en que ha tomado parte el Perú. Colección de trabajos*. Lima, Impr. de la Revista, 1909-15. 5 v.

⁷ Wiese, Carlos. *Recopilación de los tratados y convenios de arbitramento internacional*. Lima, Impr. Torres Aguirre, 1907. 337 p.

⁸ *Cuadro de los actos internacionales ajustados por la República del Perú. En vigencia el 1° de enero de 1892*. Lima, Impr. del Estado, 1892.

⁹ ———. *En vigencia el 28 de julio de 1905*. Lima, Impr. del Estado, 1905. 43 p.

¹⁰ Benavides y Diez Canseco, Alfredo, comp. *Colección de actos internacionales. En vigor para la República del Perú*. [Lima? 1916?] [Separate paginations for each treaty.]

¹¹ *Tratados, convenciones y acuerdos vigentes entre el Perú y otros estados*. Lima, Impr. Torres Aguirre, 1936. 2 v.

———. *Suppl. 1-3*. Lima, Impr. Torres Aguirre, 1936. 3 v.

¹² *Tratado de comercio, acuerdos y convenios celebrados entre el Perú y los Estados Unidos de América*. Lima, Carlos E. Larrabure, 1942. 80 p.

¹³ Castro Harrison, Jorge, and others, eds. *Convenios culturales del Perú*. [Lima, Gran Unidad Escolar B. Herrera, 1960] 114 p. (Series Relaciones Humanas, no. 1)

Chile, Colombia, and Ecuador. Also included are a maritime treaty, the United Nations Charter, Statutes of the International Court of Justice, the International Development Bank, International Monetary Fund, UNESCO, World Health Organization, OAS, and the Alliance for Progress.¹⁴

A recent publication by the Industrial Bank of Peru incorporates the principal and supplementary documents relating to the economic integration of the Andean nations.¹⁵

Whenever pertinent, copies of treaties and similar documents may be found appended to general textbooks and those treating specifically of special subjects. However, the researcher whose knowledge of the Spanish language is minimal would fare much better by referring to the treaty series issued regularly by the United Nations¹⁶ and the U.S. Department of State.¹⁷ The latter, since 1929, has put out a list of treaties in force between the United States and other countries as of a given date, which is updated periodically.¹⁸

Territorial Waters

It has been alluded to elsewhere in this guide that Peru, along with Ecuador, made headlines in recent times because of the problems generated by the 200-mile jurisdictional claim of these countries over its territorial waters. The international implications of this claim and, more importantly, its impact on present-day hemispheric relations certainly merit a special subsection.

Peru, by Supreme Decree 781 of August 1, 1947, declared that its national sovereignty and jurisdiction extended over the sea adjacent to its coasts up to a distance of 200 marine miles. On August 8, 1952, this declaration was supported in a tripartite meeting convened in Santiago by Chile, Ecuador, and Peru, from which the Declaration of Santiago on Maritime Zones was issued. This declaration invoked a common international maritime policy of 200 nautical miles for these three Latin American countries, subject only to the right of innocent passage

¹⁴ González Dittoni, Enrique, ed. *Textos internacionales del Perú: [los más importantes tratados del Perú, bilaterales y multilaterales]* Lima. Ediciones del Sol. 1962. 529 p. (Biblioteca de Derecho)

¹⁵ *Acuerdo de integración subregional andino*. [Lima, Fondo del Libro, Banco Industrial del Perú] 1969. 159 p.

¹⁶ United Nations. *Treaty series; treaties and international agreements registered or filed and recorded with the Secretariat of the United Nations* . . . v. 1- 1946/47-New York [etc.]

¹⁷ U.S. Department of State. *Treaties and other international acts series 1501-* [Washington, U.S. Govt. Print. Off., 1946- v.]

¹⁸ U.S. Department of State. Office of the Legal Adviser. *Treaties in force; a list of treaties and other international agreements of the United States*. [Washington, U.S. Govt. Print. Off.] v.- (U.S. Department of State Publication)

of foreign vessels.¹ Principally aimed at protecting and conserving the fishing industries of the signatory countries, other joint declarations sought to solve the fishing problems in the South Pacific. They include resolutions recommending, among other actions, that the governments concerned should establish marine biology stations on their coasts, which would prevent the depletion of fishery resources, and that these governments should only grant fishing permits within the 200-mile zones to applicants who had satisfactorily complied with certain conditions.

According to J. J. Santa-Pinter, an associate professor at the University of Puerto Rico and a consistent and prolific articulator of Latin American legal questions, seven Latin American nations—Argentina, Costa Rica, Chile, Ecuador, El Salvador, Panama, and Peru—have claimed the same jurisdictional distances as of October 1969.² In May 1970 these countries, except Costa Rica, joined forces with three other Latin American republics—Brazil, Nicaragua, and Uruguay—in what is known as the Declaration of Montevideo in which all the signatories reaffirmed the right of the coastal states to establish the limit of their territorial waters or seas as well as to dispose of their natural resources. In August 1970 the same author states another meeting held in Lima produced the Declaration of Latin American Countries on the Law of the Sea. In addition to those countries mentioned, the new signatories consisted of the Dominican Republic, Guatemala, Honduras, and Mexico. The main thrust of this document is to confirm the right of each coastal state to be the sole arbiter of the breadth of its territorial waters.³

Peru has given added impetus to this right in a 1971 decree, Decree-Law 18810 or the General Law on Fishing,⁴ which reiterates as the basic premise for regulating the country's fishing industry the 200-mile limit it had unilaterally adopted in 1947.

It is significant to note that quite apart from a great many countries which still adhere to the traditional three-mile limit, the People's Republic of China has given recognition to the Peruvian claim of 200 miles. Long before the much-publicized U.S. initiatives toward recognizing Red China, Peru established diplomatic relations with that country, recognizing it in effect as the legal government of China, in an agreement formalized in 1971 in Ottawa, Canada.⁵

¹ *Revista Peruana de Derecho Internacional*, (Lima) v. 14, 1954, p. 104.

² Santa-Pinter, J.J. "Latin American Countries Facing the Problem of Territorial Waters." In *The San Diego Law Review*, v. 8, no. 3, May 1971, p. 614.

³ *Ibid.*, pp. 615-616.

⁴ *El Peruano*, Mar. 26, 1971.

⁵ *The New York Times*, Nov. 3, 1971.

As of 1972, the United States has yet to signify any willingness to recognize the 200-mile extension.

Except for articles in law reviews and brief passages in some post-1947 public international law textbooks cited earlier, it is evident that, despite its importance, the matters of territorial waters and the continental shelf have not been the subject of extensive treatises or monographs. It is predicted, however, that this escalating controversy will eventually demand greater attention from Peruvian authors and legal scholars.

Private International Law

Peru's interest in codifying private international law dates back to the early 19th century, but the disastrous War of the Pacific (1879-83) in which Peru was involved tended to nullify her initial efforts in this field.

One of the first attempts at codification took place in Lima where a congress attended by Argentina, Bolivia, Chile, Costa Rica, Cuba, and Ecuador was convoked in 1877 for this specific task. The congress was successful in drafting a Treaty for Unification of Civil International Law,¹ which was published with a statement of motives supportive of the draft, signed by Antonio Arenas. This draft, however, was never ratified by the conferees apparently because it sanctioned a civil law regime based on the nationality rather than the domiciliary doctrine with reference to personal status and civil capacity.

At the Congress of Montevideo in 1889,² Peru was represented along with Argentina, Uruguay, Paraguay, Bolivia, Brazil, and Chile. At this congress, six treaties on conflict of laws were signed relating to civil law, commercial law, criminal law, procedural law, copyright, patents and trademarks, and the liberal professions. These treaties, as ratified, had the force of law in Peru and in the other signatory countries with the exception of Brazil and Chile, which withheld ratification.

¹ Congreso Americano de Jurisconsultos. *Tratado para establecer en América reglas uniformes sobre derecho internacional privado precedido de la exposición en que se explican los motivos de esas reglas*. Ed. oficial. Lima, Impr. del Estado, 1878. 36, 12 p.

———. *Tratado para establecer en América reglas uniformes sobre derecho internacional privado, y exposición en que se explican los motivos de las resoluciones adoptadas por las representantes de las repúblicas signatarias*. Lima, Cosmópolis, 1878. 42, 17 p.

———. *Tratado de extradición celebrado por el Congreso Americano . . . , precedido de la exposición en que se explican los motivos de las estipulaciones que contiene*. Ed. oficial. Lima, Impr. del Estado, 1879. 30 p.

² Congreso Sud-Americano de Derecho Internacional Privado. *Actas y tratados celebrados por el Congreso internacional . . . [1888-89]*. Montevideo, Impr. El Siglo Ilustrado, 1911. 857 p.

Peru's concern with conflict rules is best illustrated through her active collaboration with other Latin American countries towards achieving progressive codification. Along with 17 other American republics she participated in the First Pan American Conference held in Washington, D.C., in 1889, which urged the ratification of the Montevideo treaties. Peru also had delegates attending the Bolivarian Congress held in Caracas, Venezuela, in 1911. In 1907, in a meeting of the International Commission of Jurists, draft codes were prepared by subcommittees of the commission. One of these subcommittees, known as the Sixth Committee of the International Commission of Jurists, approved a draft prepared by its chairman, Dr. Elmore,³ the former chief justice of Peru's Supreme Court, for submission and consideration at the next full meeting of the commission. Although this draft never went beyond this stage, it certainly represents Peru's significant initiatives towards codification.

The Bustamante Code embodies successful Latin American efforts at codification. Its author, the great Cuban internationalist, Dr. Antonio Sánchez de Bustamante y Sirvén, commenced work on the original draft in Lima in 1924. Approved at the Sixth Pan American Conference held in Havana in 1928, the code was subsequently approved by the Peruvian Congress on December 27, 1928, and later ratified under Legislative Resolution 6446 of January 6, 1929.

In 1939 the Uruguayan government invited Peru and other participating nations of the 1899 conference for a commemorative meeting at Montevideo.⁴ Treaties on asylum, copyright, and the exercise of professions were entered into at this time. A second congress called on March 6, 1940,⁵ invited Ecuador, Colombia, and Venezuela. At this congress, certain amendments to the Montevideo Treaty (Treaty of International Civil Law) were adopted. Peru, however, did not subscribe to them. As far as the Bustamante Code was concerned, the result of this 1940 meeting was more or less a reaffirmation, with some modifications, of the provisions of the code.

Today the Montevideo Treaty regulates inter-American relations among Peru, Argentina, Bolivia, Paraguay, Uruguay, and Colombia. On the other hand, the Bustamante Code regulates inter-American relations among Peru, pre-Castro Cuba, Guatemala, Honduras, Nicaragua, and Panama as full signatories without reservations, and the following signatories with reservations: Bolivia, Brazil, Costa

³ Proyecto de codificación del derecho internacional privado. *Objeto de la 6ª Comisión aprobada por ésta a iniciativa de su Presidente Dr. Alberto Elmore*. Lima, La Opinión Nacional [1914] 107 p.

⁴ Cincuentenario del Congreso de Montevideo, 1889-1939. *Reunión de jurisconsultos, Actas* . . . Montevideo, 1940. 119 p.

⁵ *Segundo congreso sudamericano de derecho internacional privado de Montevideo, 1939-40*. Buenos Aires, Impr. de la Universidad, 1940. 345 p.

Rica, Chile, Ecuador, Venezuela, El Salvador, Haiti, and the Dominican Republic.

The Civil Code of 1936 provides some basic conflict rules in its preliminary title relating to personal status and civil capacity, domestic relations, marital property (see civil law), other types of property, obligations and contracts, wills, and succession. To complement or supplement these provisions, the texts of the Montevideo Treaty and the Bustamante Code are usually appended to some civil code editions. On the subject of execution and recognition of foreign judgments, a researcher may refer to title XXIX, articles 1155-1168 of the 1912 Code of Civil Procedure which is still in force.

The contributions to the literature on private international law, as compared to public international law, are fewer. An early treatise which was located does not even represent a national effort. The work is a translation into Spanish by Dr. Manuel A. Fuentes of a French text, whose well-known author, Dr. Pradier-Fodéré, taught courses on private international law at the Faculty of Political and Administrative Sciences of Lima.⁶ Before this time an exhaustive treatise dealing with the status of aliens in Peru had been published in Chile by Dr. Félix Cipriano C. Zegarra.⁷ This is a thoroughly documented work, treated both from historical and comparative viewpoints, and is defensive of early Peruvian policies and legislation.

Another early Peruvian writer on international law was Dr. Manuel V. Morote, a professor at San Marcos University. This treatise covers all phases of conflict rules⁸ and is not restricted to Peruvian practices.

Other contributions consist of textbooks from the pen of Prof. Carlos García Gastañeta,⁹ also of San Marcos University. Unfortunately, however, copies of his work appear to be unavailable. In fact, only a second edition is cited in certain treatises by other authors and in some bibliographies, including two lists of consulted works compiled by Professor García himself.

Luis Alvarado Garrido, a professor at San Marcos University and the Catholic University, collected three of his studies in one volume.¹⁰ The first of the three studies analyzes and criticizes from a comparative standpoint the Peruvian

⁶ Pradier-Fodéré, Paul Louis Ernest. *Curso de derecho internacional privado* . . . Tr. por Manuel A. Fuentes. Lima, Impr. del Estado, 1877. 504 p.

⁷ Zegarra, Félix Cipriano C. *La condición jurídica de los extranjeros en el Perú*. Santiago de Chile, Impr. de la Libertad, 1872. 204 p.

⁸ Morote, Manuel V. *Tratado de derecho internacional privado*. Lima, Edit. E. Moreno, 1896. 363 p.

⁹ García Gastañeta, Carlos. *Derecho Internacional Privado*. [1.ed.?] 2.ed. Lima, Libr. é Impr. Gil, S.A., 1930. 333 p.

¹⁰ Alvarado Garrido, Luis. *Apuntes de derecho internacional*. Lima, Impr. Torres Aguirre, 1940. 105 p.

legislation on nationality. The second treats of Peruvian application of private international law principles and doctrines through the provisions of the 1936 Civil Code as correlated with the Montevideo Treaty and the Bustamante Code. The third consists of a brief treatment of the copyright treaty signed at Montevideo in 1939 and includes as appendixes the texts of the 1889 and 1939 treaties on the same subject.

A doctoral thesis by M. Julio Delgado A., who was later to contribute more extensively to the field of economics and taxation, is in effect a compendium of private international law relating to the civil, property, economic, and commercial rights of aliens in Peru¹¹ (see aliens under administrative law). This doctoral dissertation, written in 1940, is based more or less on a thesis written by Dr. Delgado in 1933 before the advent of the 1936 Civil Code. Shortly after the adoption of the civil code, he published a similar compendium¹² geared to the provisions of the code.

In 1940 comprehensive notes of the lectures on conflict of laws, apparently given at the Catholic University by Prof. José Félix Aramburú, were collected in one volume by Eduardo Reátegui Weninger and José Demetrio León,¹³ presumably students at the same university at that time. The work, although unavailable for examination, appears worthy of inclusion because of not only its seemingly broad coverage but also the paucity of research tools in the field.

Two years after the signing of the 1940 Montevideo Treaty, the Peruvian delegate José Luis Bustamante i Rivero, who would later become president of Peru, annotated the treaty.¹⁴ The resulting work constitutes a valuable reference tool. Each provision is extensively commented upon with comparisons made to the 1889 treaty provision. Preliminary chapters provide historical antecedents.

A number of law school theses and doctoral dissertations covering the period from the later 1800's to the early 1940's and chosen according to standards followed in the other chapters of this guide are enumerated below as footnotes.¹⁵

¹¹ Delgado A., M. Julio. *Condición jurídico-económica de los extranjeros en el Perú*. Lima, 1940. 89 p. [Univ. Mayor de San Marcos de Lima]

¹² ———. *Compendio del derecho internacional privado. Anotado con el nuevo Código Civil*. Lima, 1938. 85 p.

¹³ Aramburú, José Félix. *Derecho internacional privado; lecciones dictadas por José Félix Aramburú. Tomadas por Eduardo Reátegui Weninger. Colaboración de José Demetrio León*. [Lima] Univ. Católica del Perú [1940?] 419 l.

¹⁴ Bustamante i Rivero, José Luis. *El tratado de derecho civil internacional de 1940. (Gestación-glosas-interpretación)* Montevideo [Tall. Gráficos de B. U. Chiesino] 1942 [i.e. 1943] 180 p. (II. Congreso Sudamericano de Derecho Internacional Privado de Montevideo)

¹⁵ Alzamora, Román. *El lugar del contrato en el sistema del derecho*. Lima, 1868. [Thesis] Arias Schreiber, Diómedes, *¿Hay or no casos en que las sucesiones de los extranjeros están sujetas a las leyes nacionales?* Lima, 1880. [Thesis]

The Eighth American International Conference held in Lima in 1938 encouraged unification of the civil and commercial laws of the American republics. The letters, communications, and other documents which have since appeared may be found in a single collection compiled by the Law School of San Marcos University.¹⁶ The assorted communications are mostly from other law schools and universities in North and South America reporting their opinions and works in point.

Among the contemporary writers whose works merit special mention are three authors. Edwin M. Borchard, an American international legal scholar, law professor, author, Law Librarian of the Library of Congress from 1911 to 1916, and initiator of the concept of a series of legal guides to foreign law,

Alzamora, Lizardo. *Los tribunales del país son o no competentes para conocer de los delitos comunes cometidos a bordo de buques de guerra nacionales en aguas de otra potencia, o a bordo de buques merchantes extranjeros en nuestras aguas?* Lima, 1881. [Thesis]

Villarán, Manuel Vicente. *¿Por qué aplican los estados leyes extranjeras a ciertos actos jurídicos realizados en su territorio?* Lima, 1893. [Thesis]

Araujo, Ernesto. *Extraterritorialidad de las leyes sobre sucesión.* Lima, 1896. [Thesis]

Maúrtua, Aníbal M. *La capacidad jurídica de los extranjeros debe regirse por la ley nacional o por la ley del domicilio?* Lima, 1899. [Thesis]

González Olaechea, Manuel. *Necesidad de unificar el código de comercio con el código civil.* Lima, 1904. [Thesis]

López, Juan C. *Las sentencias civiles extranjeras en la legislación peruana.* Lima, 1911. [Thesis]

García Gastañeta, Carlos. *El régimen de la personalidad jurídica.* Lima, 1915. [Thesis]

Basombrío y Echenique, C. *La actuación internacional de las sociedades.* Lima, 1919. [Thesis]

Barreto, Anselmo. *La nacionalidad de las compañías de comercio en su relación con los principios de la personalidad jurídica.* Lima, 1929. [Thesis]

Delgado Irigoyen, Javier. *La codificación del derecho internacional privado en América.* Lima, 1933. [Thesis]

Jiménez Borja, José. *Los extranjeros en el Perú.* Lima, 1934. [Thesis]

González Pacheco, César Augusto. *El divorcio ante el derecho internacional privado, especialmente ante la legislación peruana.* Lima, 1936. [Thesis]

Reyna Farge, José. *Exposición y examen crítico del sistema de derecho internacional privado de nuestra código civil vigente.* Lima, 1939. [Thesis]

Delgado A., M. Julio. *Condición jurídico-económica de los extranjeros en el Perú.* Lima, 1940. [Doctoral thesis]

Schoof Gutiérrez, Guillermo. *Algunos aspectos del divorcio en el derecho internacional privado.* Lima, 1941. [Thesis]

García Calderón, Manuel. *Concordancias y diferencias entre el tratado de derecho civil de Montevideo y el libro de derecho civil del Código Bustamante.* Lima, 1942. [Thesis]

Hinojosa Morales, Nilo. *Derecho sucesoral peruano en el derecho internacional privado.* Lima, 1942. [Thesis]

Rey de Castro, Alvaro. *Algunos aspectos de la teoría general y del derecho positivo sobre nacionalidad.* Lima, 1942. [Thesis]

Guevarra Avilés, Alberto. *Condición jurídica de los extranjeros.* Lima, 1943. [Thesis]

Pérez, Miguel Angel. *La sucesión en el derecho internacional privado.* Lima, 1943. [Thesis]

¹⁶ Facultad de Derecho, Universidad Nacional Mayor de San Marcos, comp. *Unificación de las leyes civiles y mercantiles de América.* Lima. 159 p.

wrote on the subject of state insolvency and foreign bondholders.¹⁷ The first volume of his work probes general principles, and the second deals with case histories involving Peru, among other countries.

Another author is Manuel García Calderón. In 1951 after undertaking graduate work at the University of Michigan Law School and availing himself of the research facilities of the Library of Congress, this Peruvian author and law professor did an exhaustive comparative study of Latin American legislation vis à vis negotiable instruments.¹⁸ Ten years later, he initiated a four-volume work which represents a novelty among Peruvian works. This publication consists of a digest of conflict of law materials, both legislative and judicial with commentaries and cross-references, and covers basic legislation, both national and international, involving general principles and such specific topics as the status of aliens in Peru and the civil, maritime, commercial, and procedural laws and treaties.¹⁹

García Calderón next published an excellent textbook covering the same broad range of subjects but with more analytical and extensive treatment.²⁰

A third author, Roberto MacLean y Estenós, produced a rare monograph on corporations. Research on this subject is somewhat difficult because of the lack of uniform technology in this field. Dr. MacLean's work might fill this gap. Divided into three parts, the work first presents a new evaluation of the traditional theory which emphasizes recognition, existence, and legal capacity of corporate bodies. The second section treats of a study of how Peru has accepted the principles established by international law and probes into the deficiencies of the law and possible remedial measures. The third part examines the many legal controls on the corporate powers of foreign enterprises.²¹

¹⁷ Borchard, Edwin M. *State insolvency and foreign bondholders*. New Haven, Yale Univ. Press, 1951. 2 v. [v. 2 entitled *Case Histories* by William H. Wynne]

¹⁸ García Calderón K., Manuel. *La capacidad cambiaria en el derecho internacional privado. Estudio comparativo de las legislaciones americanas*. Lima, Gil, 1951. 267 p.

¹⁹ ———. *Repertorio de derecho internacional privado; jurisprudencia, legislación, concordancias y notas*. Lima, 1961-64. 4 v.

²⁰ ———. *Derecho Internacional Privado*. Lima [Impr. de la Univ. Nacional Mayor de San Marcos] 1969. 641 p.

²¹ MacLean, Roberto. *Las personas jurídicas en el derecho internacional privado, con especial referencia al derecho peruano*. Lima, 1963. 137 p.

General Works

Source materials which greatly enrich Peruvian legal literature but do not fall specifically into any of the subject categories already established in this guide will be grouped under this section. They include items dealing with history of law, including Roman law, legal philosophy, and miscellaneous legal and paralegal material. It should be pointed out, however, that certain works which may be properly classified under this section have been cited elsewhere, either by reason of historical relevancy, convenience (as when a given author has multiple works), or necessity (as when a study is part of a larger work on Peruvian law).

History of Law

In 1876 Manuel A. Fuentes published a three-volume encyclopedia of law.¹ The first volume touches upon natural law, substantive and procedural civil and criminal laws, and commercial law; the second covers constitutional, administrative, and penal laws; and the third treats briefly of the general elements of international law, diplomacy, conflict of laws, and Roman and canon laws. A year before, Dr. Fuentes had translated into Spanish a two-volume French treatise dealing substantially with the same subjects.² This treatise consists of the classroom lectures of the noted French authority Dr. Pradier-Fodéré, who was an exchange professor teaching courses on political science at San Marcos University. Dr. Fuentes also translated another work of Dr. Pradier-Fodéré's involving general principles of law.³

¹ Fuentes, Manuel A. *Curso de enciclopedia del derecho*. Lima, Impr. del Estado, 1876. 3 v.

² Pradier-Fodéré, Paul. *Compendio del curso de enciclopedia del derecho*. Tr. por Manuel A. Fuentes. Lima, Impr. del Estado, 1875. 540 p.

³ ———. *Principios generales de derecho de política y de legislación*. Tr. por Manuel A. Fuentes. Lima, Impr. del Estado, 1875. 370 p.

One of the first legal historians of Peru was Román Alzamora, dean of the law school of San Marcos University and a professor there at the end of the 19th century. His work on Peru's legal history was used as a school text ⁴ for many years. It traces Peru's legal heritage back to Spanish and Inca institutions. Special chapters are devoted to the growth of constitutional, civil, and penal law institutions since Peru's independence. In the mid-thirties, his nephew, Lizardo Alzamora Silva, following in his footsteps as law professor, author, and dean of the same law school, reissued the textbook.⁵ The new text contains necessary revisions and annotations, and eliminates the original section on Inca history.

Lizardo Alzamora, brother of Román Alzamora and father of Lizardo Alzamora Silva, was also a professor at San Marcos University and taught courses on Roman law. In 1897 transcripts of his professional lectures on Roman law were compiled by a student ⁶ and, with his permission, published as a textbook for his courses. It appears that this book is the basis of another revisory work ⁷ undertaken in 1947 by Lizardo Alzamora Silva.

Aníbal Gálvez, a member of the Historical Institute of Peru, contributed an item on the history of the Lima Bar Association which in itself is a history of the legal profession and its influence on and contribution to Peruvian legislation.⁸

In 1918 José Manuel Osoreo chose legal history as the subject for his bachelor of law thesis ⁹ as well as his doctoral dissertation.¹⁰ The dissertation, reputedly a very scholarly work, discusses pre-Inca legal development and the adaptability of Spanish colonial law to the Indian population. Like Osoreo, Alfonso Benavides Loredó was historically oriented. His law thesis is expository in nature and deals with the legal developments during the colonial and postcolonial period up to the adoption of the basic national codes.¹¹ His dissertation offers a broader and

⁴ Alzamora, Román. *Curso de historia de derecho peruano*. Lima, Impr. del Estado, 1876. 258 p.; 2.ed. 1901. 338 p.

⁵ ———. *Historia del derecho peruano. Revisada y anotada por Lizardo Alzamora Silva*. [Lima, Tall. de Linotipia] 1945. 138 p. (Univ. Nacional Mayor de San Marcos. Facultad de Derecho)

⁶ Cortés, Leopoldo. *Apuntes de derecho romano*. Lima, Libr. Francesa Galland, 1897. 446 p.

⁷ Alzamora, Lizardo. *Derecho romano. Revisado y anotado por Lizardo Alzamora Silva*. Lima, Tall. de Linotipia, 1946. 520 p.

⁸ Gálvez, Aníbal. *El colegio de abogados de Lima. Historia de su fundación*. Lima, Empr. Lit. Torres Aguirre, 1915. 274 p.

⁹ Osoreo, José Manuel. *El medio peruano jurídico-social*. Lima, 1918. (Univ. Nacional Mayor de San Marcos)

¹⁰ ———. *El medio y la legislación. (Contribución a la historia del derecho peruano.)* Lima, Libr. é Impr. Gil, 1918. 199 p.

¹¹ Benavides Loredó, Alfonso. *Antecedentes de los códigos peruanos*. Lima, 1918.

more sophisticated treatment of the same topics.¹² Another law thesis written in 1937 by Estuardo Núñez is worthy of inclusion in this section. Highly commended in law reviews, it shows German doctrinal influences on various Peruvian codes.¹³

Although mainly biographical, the works of Víctor E. Ayarza and Neptalí Benvenuto offer relevant data. One relates to the Senate and includes biographies of a selected number of its outstanding members over a period of a century,¹⁴ and the other provides biographical sketches of senators and congressmen in office between 1904 and 1923.¹⁵ The laws initiated by these legislators, the debates in which they took part, and their publications all shed light on Peru's legal history.

An elementary textbook on the basic principles of law in the constitutional, civil, and commercial fields came from the pen of J. M. Vallejos y González. The book was used in the thirties by both high school and commercial law students.¹⁶ A book on Roman law was written by Prof. Carlos Rodríguez Pastor for his review courses on that subject at San Marcos University.¹⁷

Dr. Basadre, jurist, law professor, and national librarian of Peru at one time, intended to write a multivolume series on legal history. As far as it can be ascertained, however, he only produced the initial volume. Introductory in nature, this volume treats of both foreign and domestic sources of Peruvian law. It contains very instructive chapters on the pre-Inca period and the history of the Incas in the pre-Hispanic epoch. Dr. Basadre also traces the development of Spanish law and its adoption and growth in the American colonies.¹⁸

On the occasion of the opening session of the Superior Court of Lima in 1938, Chief Justice Juan Bautista de Lavalle depicted in a 23-page address the development and the status as of that time of each major field of Peruvian law

¹² ———. *Bosquejo sobre la evolución política y jurídica de la época republicana del Perú*. Lima, Acevedo, 1918. 281 p. [Doctoral thesis]

¹³ Núñez, Estuardo. *La influencia alemana en el derecho peruano*. Lima, Gil, 1937. 46 p.

¹⁴ Ayarza, Víctor E. *Reseña histórica del Senado del Perú, 1821-1921*. Lima, Impr. Torres Aguirre, 1921. 300, cxliv, 147, lxi p.

¹⁵ Benvenuto, Neptalí. *Parlamentarios del Perú contemporáneo, 1904-23*. Lima, Impr. Malatesta, 1923. 262 p.

¹⁶ Vallejos y González, J. M. *Derecho usual con la constitución comentada y principios generales de derecho civil y de legislación comercial*. Lima, Impr. Edit. Rimac, S. A., 1935. 168 p.

¹⁷ Rodríguez Pastor, Carlos. *Prontuario de derecho romano*. Lima, Impr. Americana, 1938. 205 p.

¹⁸ Basadre, Jorge. *Historia del derecho peruano*. Lima, Edit. Anterior, S.A., 1937. 1 v. (Biblioteca peruana de ciencias jurídicas y sociales)

and the influence and effect of newly adopted codes on the judiciary.¹⁹ One may also consult the university lectures of Dr. de Lavalle to freshmen law students on general principles of juridical science and introduction to the various theories of law.²⁰

In 1943 José Varallanos revived the 16th-century classic on Inca law by Felipe Guamán Poma de Ayala. Entitled *Nueva crónica y buen gobierno*, it was written originally in the Quechua language. In 1936 it was edited and reprinted in French under the direction of Paul Rivet of the Institute of Ethnology in Paris. The Spanish edition by Varallanos includes a biography of Dr. Gaumán Poma de Ayala, excerpts from the original work in Quechua, and invaluable annotations and commentaries by Varallanos.²¹ The same author, along with other Peruvian writers, had written a number of articles on Indian law but for purposes of this section only major works will be cited (see Indians under administrative law). In 1946 in an excellent treatise based largely on his 1943 work, Varallanos endeavored to show the influence of Indians on Peruvian contemporary social life and labor legislation.²²

Concluding this section are two more works. A textbook written by Professor Tola for his Roman law courses at San Marcos University contains two parts covering the subjects of contractual and criminal laws.²³ Lastly, a treatise by Manuel Belaúnde Guinassi relates to the distribution among Peruvian landowners of Indian labor, known as the *encomienda* system.²⁴ This second work contains an illuminating and complimentary prologue by Dr. Basadre.

Legal Philosophy

Peru has always been heavily influenced by European legal thought and philosophy. Among the early students of legal philosophy in Peru was Dr. Silva Santisteban, who was an advocate of the *jus naturalistic* doctrines which were predominant in his time. His treatise on natural law defines and analyzes various

¹⁹ Lavalle, Juan Bautista de. *La renovación del derecho peruano y la función judicial*. Lima, Tip. Varese, 1938? 23 p.

²⁰ ———. *Introducción a las ciencias jurídicas y políticas. Curso dictado por . . . Primer año de derecho (1940)*. 148 p. [Mimeographed]

²¹ Varallanos, José. *El derecho inca según Felipe Guamán Poma de Ayala. Redacción y notículas de . . .* (Huancayo, Tip. Santa Rosa, 1943). 185 p.

²² ———. *El derecho indiano a través de nueva crónica y su influencia en la vida social peruana*. Lima, Suma Editorial, 1946. 185 p.

²³ Tola, Fernando. *Derecho Romano*. Lima, Tall de Linotipia, 1944. 2 v.

²⁴ Belaúnde Guinassi, Manuel. *La encomienda en el Perú*. Lima, Edit. Lumen, S.A., 1945. 259 p. (Ediciones Mercurio Peruano)

schools of thought and expounds on German as well as other foreign theories.¹

Another champion of the naturalistic school, José Celedonio Urrea, wrote a pamphlet against the positivistic doctrines which were beginning to attract some following. Dr. Urrea's work is divided into two major parts, one relating to legal history and the other to legal philosophy.²

Professor de la Lama wrote a textbook for the use of his students in the mid-19th century. It treats of the general elements of law based on natural law and philosophical doctrines.³

A similar work by Ricardo Heredia, another law professor, considers some philosophical theories underlying criminal laws. The importance of this textbook is underscored by the fact that a philosophical approach to law is employed vis-à-vis criminal acts.⁴ The book, divided into "lessons" and written in narrative style, was meant for San Marcos University students.

Román Alzamora, the historian and the elder of the Alzamora family of legal scholars, wrote his law thesis on legal philosophy.⁵ Other noted writers as well as jurists of Peru who had chosen various aspects in this field for their initial venture in legal writing are Germán Aparicio y Alvarado,⁶ Jacinto Bedoya,⁷ Víctor Andrés Belaúnde,⁸ Cesáreo Chacaltana,⁹ Pablo A. Rada,¹⁰ José M. Samamé,¹¹ and Carlos Zavala Loaiza.¹² Younger Dr. Belaúnde, it should be noted, also published a collection of profound studies on Peruvian legal history

¹ Silva Santisteban, José. *Derecho natural, ó filosofía del derecho*. Lima, Tip. de El Heraldo, 1854. 128 p.; 2.ed. (?) 3.ed. [1856?] 252 p.

² Urrea, José Celedonio. *Principios de legislación natural ó filosofía del derecho*. Callao, Impr. de Estévan Dañino, 1855. 1 v.

³ Lama, Miguel Antonio de la. *Lecciones de filosofía del derecho y de principios de legislación*. [1.ed.?] 2.ed. Lima, Impr. Santiago Ledesma, 1862. 250 p.

⁴ Heredia, Ricardo. *Lecciones de derecho penal filosófico*. Lima, Impr. de Calle de Padre Gerónimo, 1884.

⁵ Alzamora, Román. *Del fin del estado y de sus relaciones con las demás instituciones sociales*. Lima, 1868. [Thesis]

⁶ Aparicio y Alvarado, Germán. *Exámen del origen del derecho*. Lima, 1869. [Thesis]

⁷ Bedoya, Jacinto. *Del hombre considerado en sus diferentes estados sociales y de su influencia en ellos*. Lima, 1874. [Thesis]

⁸ Belaúnde, Víctor Andrés. *La filosofía del derecho y el método positivo*. Lima, 1904. 46 [2] p.

⁹ Chacaltana, Cesáreo. *La justicia intrínseca y la legitimidad de la pena de muerte*. Lima, 1869. [Thesis]

¹⁰ Rada, Pablo A. *Concepto del derecho, según Kant*. Lima, 1902. [Thesis]

¹¹ Samamé, José M. *La ley jurídica es distinta de la ley moral*. Lima, 1880. [Thesis]

¹² Zavala Loaiza, Carlos. *Concepto económico del derecho*. Lima, 1904. [Thesis]

and philosophy. Younger thinkers and philosophers followed suit; their more recent works are listed at the end of this section.

In 1912 Dr. de la Riva Agüero contributed an item on the conceptual and evolutionary treatment of law.¹³

Manuel Vicente Villarán and Juan Bautista de Lavalle, two great Peruvian legal thinkers, contributed immensely to the art of conceptual analysis of legal institutions by teaching courses in this sophisticated field. Dr. Villarán's 19th-century work on natural law consists of two parts. The first part considers the growth of law and jurisprudence, and the second treats specifically of the science of law, its philosophical, positivistic, or institutional phases.¹⁴ Dr. Villarán's lectures on the influence of positivistic doctrines on the moral sciences are excellent samples of the outstanding theories which were so uniformly accepted in Latin America.¹⁵

Dr. de Lavalle demonstrated his great ability and interest in the field of legal philosophy as early as 1911 when, as a graduating law student of San Marcos University, he wrote his law thesis on that subject. This work treats of the modern trends of that critical period in Peru's legal history. Published in the university organ, it was subsequently reprinted.¹⁶ This excellent treatise earned for Dr. de Lavalle the prestigious university chair for legal philosophy. In an article published in the university magazine¹⁷ during his first year as a faculty member, he defined law as "the imperative coordination of conduct in accordance with the dignity and destiny of the human person, [and] in the sense of realization of security and justice in the relations among persons." Lavalle also issued three editions of a Spanish translation of the authoritative work by the European philosopher, Icilio Vanni.¹⁸ He was assisted in this task by Adrián Miguel Cáceres Olazo. His brother, Hernando de Lavalle, collaborated with him

¹³ Riva Agüero, José de la. *Concepto de derecho. Ensayo de filosofía jurídica*. Lima, Libr. Francesa E. Rosay, 1912. 114 p.

¹⁴ Villarán, Manuel Vicente. *Lecciones de derecho natural*. Lima, Impr. de J. Francisco Solís, 1895. 1 v.

———. ———. Lima, Impr. y Enc. de Gmo. Stolte, 1897. 1 v.

¹⁵ ———. "Las ciencias morales contemporáneas y su tendencia positiva." In *Revista universitaria, órgano de la Universidad Mayor de San Marcos*. May 1907, pp. 121-137; June 1907, pp. 252-258.

¹⁶ Lavalle, Juan Bautista de. *La crisis contemporánea de la filosofía del derecho*. Lima, Ofic. Tip. de La Opinión Nacional, 1911. 315 p.

¹⁷ ———. "Concepto integral del derecho." In *Revista universitaria, órgano de la Universidad Nacional Mayor de San Marcos*. August 1913, pp. 130-163.

¹⁸ Vanni, Icilio. *Filosofía del derecho. Primera versión castellana por los doctores Juan Bautista de Lavalle y Adrián Miguel Cáceres Olazo*. Lima, E. Rosay, 1909; 2.ed. (?) 3.ed. 1923. 545 p.

on the third edition. All editions contain copious notes and extensive commentaries. In 1923 Dr. de Lavalle delivered a stirring eulogy depicting the life and works of his former mentor, Luis Felipe Villarán. The eulogy¹⁹ treats of Villarán's works as law professor, author, and jurist, and more importantly, it delves into Villarán's teachings and theories on legal philosophy.

In 1939 on the occasion of Manuel Vicente Villarán's retirement and installation as honorary professor of San Marcos University, Dr. de Lavalle issued a relatively brief commemorative work on legal philosophy by way of honoring Dr. Villarán's initiatives in this field.²⁰ Finally, in 1944 another contribution from the same pen was published—the first Spanish version of the comprehensive and authoritative work of the Swiss legal philosopher Claude du Pasquier.²¹ Dr. de Lavalle's 35-page introduction and annotations throughout the work are invaluable sources of legal thought and theory as they relate to Peruvian and Latin American practices.

The philosophical teachings of Toribio Pacheco, author of the early 19th-century erudite treatise on civil law, are the object of study of two Peruvian works. The first appeared in 1928 and is actually an address delivered by Raúl Porras Barrenechea in commemoration of the centennial celebration of Dr. Pacheco's birthday,²² and the second is an article by M. Segundo Núñez Valdivia, a legal historian teaching at the University of Arequipa.²³ Dr. Núñez Valdivia is also author of a monograph on the modern trends of law and the legal crisis of the forties.²⁴

In an address delivered on the occasion of the opening of the 1942 academic year of the University of Arequipa, Pedro Delgado, dean of the university's law school, dealt with the modern concepts of law within the context of World War II.²⁵ The address, which also appeared in *Revista Universitaria*, the uni-

¹⁹ Lavalle, Juan Bautista de. *Luis Felipe Villarán. El maestro, el jurista, el magistrado*. Lima, E. Rosay, 1923. 72 p.

²⁰ ———. *Filosofía del derecho y docencia jurídica*. Lima, Libr. é Impr. Gil, S.A. 1939. 60 p.

²¹ Pasquier, Claude du. *Introducción a la teoría general del derecho y la filosofía jurídica*. Lima, Libr. é Impr. Gil, S.A., 451 p.

²² Porras Barrenechea, Raúl. *Toribio Pacheco; conferencia sustentada en el homenaje del ilustre Colegio de abogados de Lima, con motivo del centenario del nacimiento de Toribio Pacheco el 16 de abril de 1928*. Lima [Sanmartí y Cía.] 1928. 41 p.

²³ Núñez Valdivia, M. Segundo. "El pensamiento jurídico de Toribio Pacheco." In *Universidad de Arequipa* (1940) año XIII, no. 16.

²⁴ ———. *La crisis del derecho actual*. Arequipa, Universidad de Arequipa. n.d., n.p.

²⁵ Delgado, Pedro. *Algo sobre filosofía de la guerra actual i sobre una nueva filosofía del derecho*. Arequipa, Tip. Cuadros, 1942. 46 p.

versity journal, is cited here mainly because of its novelty.

Commencing with his doctoral thesis,²⁶ Dr. León Barandiarán produced several works on the various schools of thought and matters of methodology in the field of legal philosophy. Ten years after the publication of his thesis, he wrote a biographical article highlighting the teachings of M. V. Villarán, his former mentor on legal philosophy.²⁷ Dr. León's other contributions include a collection of his addresses and lectures entitled *Law and Art*,²⁸ mimeographed transcripts of his classroom lectures on philosophy of law,²⁹ and an address made at San Marcos University's law school about abstract theories underlying the administration of justice.³⁰

A textbook consisting of the classroom lectures of Mariano Ibérico Rodríguez for the 1943 academic year at San Marcos University explains the fundamental concepts of legal philosophy and the evolutionary growth of law and logic with definitions, interpretations, and practical illustrations.³¹ On the other hand, a work by Dr. Eguiguren probes the philosophy underlying constitutional and administrative policies and stresses the "pure theory of law," a school of which the eminent philosopher Hans Kelsen is an exponent.³²

A most interesting work appeared in 1956. Coming from the pen of José Bonilla Armado, it presents a glossary of slang expressions and typical jargon of the youth and attempts to show a connecting link between this kind of language and juvenile crime.³³

A few law theses dealing with legal philosophy are listed below in chronological order.³⁴

²⁶ León Barandiarán, José. *Estudios de filosofía del derecho*. Lima, Impr. Minerva, 1929. 117 p.

²⁷ ———. "Manuel Vicente Villarán y la enseñanza de filosofía del derecho en la Universidad Mayor de San Marcos." In *Revista de derecho y ciencias políticas* (Lima) año III, no. 3, 1939, pp. 621-630.

²⁸ ———. *El derecho y el arte*. Lima, Edit. Relieves Americanos, 1943. (Discursos y conferencias, I)

²⁹ ———. *Filosofía de derecho, versiones taquigráficas corregidas*. Lima, 198 p. (Univ. Nacional Mayor de San Marcos)

³⁰ ———. *La Justicia*. Lima, Edit. Relieves Americanos, 1944. 14 p.

³¹ Ibérico Rodríguez, Mariano. *Principios de lógica jurídica*. Lima, Cía. de Impresiones y Publicidad, 1944. 74 p.

³² Eguiguren, Luis Antonio. *La democracia y la mutilación de la constitución. El estado y la teoría pura del derecho*. Lima, Tip. Peruana, S.A., 1945. 36 p.

³³ Bonilla Armado, José. *Jerga del Hampa*. Lima, Edit. Nuevos Rumbos [1956] 119 p.

³⁴ Núñez Mendizábal, Tomás. *La filosofía del derecho*. Lima, 1915. [Thesis]

Mayorga Villena, Martín Salvador. *Apuntes de la transformación que sufre el concepto del derecho en un sentido moderno de la idealidad, a fines del siglo XIX y principios del actual*. Lima, 1934. [Thesis]

Miscellany

Materials which are general works but do not fit exactly in either history of law or legal philosophy categories are listed in this general section.

A Brazilian law compiler collected the criminal laws of foreign countries along with Brazilian penal laws and published them in what appears to be a number of volumes. Volume 3 of this series, published in 1920, contains the Peruvian penal code in force as of 1934.¹

In 1945 Fidel Tubino M. wrote an essay on Francisco de Vitoria, the Spanish theologian of the 16th century. In this brief exposition, the author, a professor at the Catholic University of Peru, also traces the growth of the Catholic church.²

Geraldo Arosemena Garland traces the origins of the Lima Bar Association to the last days of the colonial period. The work, which the author calls historical "notes,"³ offers biographical sketches of former bar presidents, including that of Hernando de Lavalle who was the incumbent president (1946-47) when the author presented the work to the association.

In a 1949 study Julio Revollar Fernández of the Faculty of Education at San Marcos University treats of legislation affecting or regulating the educational system of Peru and compares it with that existing in other Latin American countries.⁴

In the same year that the preceding work was published, a reprint of an 1845 study project on legislation appeared. Written by the illustrious José Domingo Choquehuanca, it involves the strengthening of the legislative process through

Patrón Irigoyen, Jorge. *El instinto de conservación como fenómeno jurídico*. Lima, 1937. [Thesis]

Barco Peña, José. *La influencia del factor económico en la evolución del derecho y sus consecuencias en la interpretación contemporáneo de la filosofía jurídica*. Lima, 1938. [Thesis]

Ríos Lafaix, Julio C. de los. *El neocriticismo formalista de R. Stammler en la filosofía del derecho y su influencia en la cultura jurídica contemporánea*. Lima, 1938. [Thesis]

Sánchez Urteaga, José. *El positivismo jurídico y la teoría pura del derecho del profesor Kelsen*. Lima, 1939. [Thesis]

Núñez Valdivia, Jorge E. *De la estructura de la norma jurídica*. Lima, 1941. [Thesis]

¹ Piragibe, Vicente, comp. *Códigos penales extranjeros: Argentina-Peru-Italia*. Rio de Janeiro, Jacyntho, 1934. 408 p. (Legislação penal do Brasil e do estrangeiro, v. 3)

² Tubino M., Fidel. *Vitoria y la expansión de la Iglesia*. Lima, Compañía de Impresiones y Publicidad, 1945. 20 p. (Publicaciones del Seminario de Derecho de la Univ. Católica del Perú, no. 2)

³ Arosemena Garland, Geraldo. *Apuntes sobre el Colegio de Abogados*. Lima, 1947. 215 p.

⁴ Revollar Fernández, Julio. *Legislación y administración escolar del Perú y comparadas*. Lima, Edit. D. Miranda, 1949. 222 p.

the establishment of entities designed to study and formulate effective laws.⁵

Three collections appeared, one in 1953, one in 1957, and another in 1963. One was undertaken by Félix Navarro Irvine, a former bar association president, and incorporates speeches, reports, and draft codes relating to various specific fields of law except commercial law and professional ethics.⁶ The second appears to be an extensive work by Víctor Modesto Villavicencio, but it is unfortunately unavailable for examination.⁷ The third consists of two volumes of collected essays, studies, and lectures by Peru's legal luminaries dealing with the civil, constitutional, labor, and general principles of law. Edited by Domingo García Rada, these volumes were published as part of a series of publications on sociology, geography, history, and literature by the Library of Peruvian Contemporary Culture.⁸

Education in general and the teaching and study of law in particular are explored by three authors. Luis Alberto Sánchez chose to collate newspaper articles published in 1958 in Peru's *La Tribuna* at the height of the public debate on the proposed educational laws presented to and deliberated upon by the Peruvian legislature in an extraordinary session in 1957.⁹ Jorge M. Angulo Argomedo, dean of the Faculty of Law and Political Science at the National University of Trujillo, opted to look into the social mission of the university, the lawyer, and the teaching of and apprenticeship of law.¹⁰ Juan Vicente Ugarte del Pino elected to pay tribute to the Faculty of Law of the prestigious San Marcos University on the occasion of its centennial anniversary in 1966 by highlighting its important role in the social and cultural growth of Peru.¹¹

In 1963 Valentín Trujillo Mena published chapters 9 and 12 of a thesis which he had already submitted and successfully defended in 1945 in compliance with

⁵ Choquehuanca, José Domingo. *Complemento al régimen representativo. Con notas de Francisco E. Ruiz Alarco, Celso Macedo y Pastor y Nestor Puertas Castro*. Lima, Crédito Edit. Universitas, 1949. 102 p.

⁶ Navarro Irvine, Félix. *Discursos, memorias, proyectos; labor realizada para el Colegio de Abogados de Lima*. Lima, 1954. 442 p.

⁷ Villavicencio, Víctor Modesto. *El hombre y el derecho*. Lima [Edit. Junín] 1957. 388 p.

⁸ García Rada, Domingo, ed. *Derecho*. Lima, Ediciones del Sol, 1963. 2 v. (Biblioteca de cultura peruana contemporánea, 2-3)

⁹ Sánchez, Luis Alberto. *Sobre la reforma universitaria. Con un apéndice de la Ley no. 10555*. Lima, 1959. 74 p. (Asociación Peruana por la Libertad de la Cultura. Ediciones, 4. Serie: Política y polémica, no. 1)

¹⁰ Angulo Argomedo, Jorge M. *La universidad, su misión. Misión social del hombre de derecho*. [Trujillo] Universidad Nacional de Trujillo, Facultad de Derecho y Ciencias Políticas y Sociales [1965] 68 p.

¹¹ Ugarte del Pino, Juan Vicente. *Historia de la Facultad de Derecho*. Lima, Univ. Nacional Mayor de San Marcos [1968] 148 p.

requirements for the degree of Doctor of Canon Law by the Gregorian Pontifical University at Rome. The chapters he published relate to the Peruvian clergy and to doctrinal practices.¹²

In the same year Mario Alzamora Valdéz published his address and that of Germán Aparicio y Gómez Sánchez' and Julián Guillermo Romero's relating to the role of the legal profession in Peruvian society.¹³ These lectures were delivered before the Lima Bar Association on different occasions commemorating Lawyer's Day in Peru.

Late in the sixties the Lima Bar Association compiled legislation affecting the Peruvian barrister. Prefaced with a historical account of the association's 150 years of existence, the work covers legislation through 1967 involving the requirements for the practice of law under Law 14605 of July 25, 1963, and other matters touching on legal honorariums, functions of the bar, and the responsibilities of the lawyer as officer of the court.¹⁴ Lastly, the Ministry of Education compiled pertinent provisions of the Constitution, civil and civil procedure codes, and criminal code, together with individual statutes conserving and protecting the country's national cultural treasures.¹⁵

¹² Trujillo Mena, Valentín. *La legislación eclesiástica en el virreinato del Perú durante el siglo XVI; con especial aplicación a la jerarquía y la organización diocesana*. [Lima, 1963] 130 p.

¹³ Alzamora Valdéz, Mario. *La abogacía; tres conferencias sobre el hombre de derecho*. Lima, 1963. [115]-144 p. [Separata de la Revista de derecho y ciencias políticas, órgano de la Facultad de Derecho de la Universidad Nacional Mayor de San Marcos, año XXVII, no. 1, 1963]

¹⁴ Colegio de Abogados de Lima. *Legislación del abogado*. [1.ed.?] 2.ed. Lima, 1967. 247 p.

¹⁵ *Legislación arqueológica peruana en concordancia con la Constitución del Estado, Código de Procedimientos Civiles y Código Penal*. Trujillo, Ministerio de Educación Pública, Casa de la Cultura del Perú, Patronato de Arqueología, 1968. 55, xi p. (Publicaciones del Museo Chan Chan)

Collection of Laws

It is evident throughout the pages of this guide that Peru's official gazette, *El Peruano*, also called *Boletín Oficial* and *Registro Oficial* at different times in its history, is a primary source of law. Peru, however, has a number of secondary sources published officially or unofficially in various forms—annotated or unannotated compilations and digests in which subjects are arranged alphabetically. Many of these sources contain both congressional enactments and executive acts promulgated with the force of law. Hence, any reference in this chapter to law, legislation, or collections should be understood to include laws adopted by a duly constituted legislature and regulations, proclamations, resolutions, and supreme decrees made by the executive branch or administrative level. In the present military regime, as in others that preceded, a military junta rules by decree which is promulgated as a decree-law. Generally the compilations described in this section cover a broad range of the statutory field, with some exceptions; those collections relating to a specific subject, for example, labor or public administration, will be found cited in those chapters to which they properly belong.

General San Martín's early regulations, *Reglamento Provisorio*, and constitutional enactments, *Estatuto Provisorio* of 1821, before Peru's complete liberation from Spanish domination, appear in a small volume printed contemporaneously.¹

Yale University is the reputed custodian of a two-volume compilation covering the years 1820 to 1831.² One volume pertains to the first five years and the other, to the last seven. A similar work in the Library of Congress collections consists of two small volumes pertaining to the years 1821 to 1825.³

¹ *Colección de los reglamentos expedidos por el Protector de la Libertad del Perú*. Lima, Impr. del Río, 1821. 49 p.

² *Colección ó catálogo de leyes, decretos, órdenes, reglamentos é instrucciones, dictadas desde el año de 1820 hasta el de 1831*. Lima, n.d. 2 v.

³ *Colección de leyes y decretos sancionados desde la jura de la independencia*. Lima, Impr. del Estado por J. González, 1825-26. 2 v.

Sensing the urgent need for an extensive reference tool, Mariano Santos Quirós commenced publication of a series of volumes to cover legislation from 1821 to December 31, 1830. The initial volume appeared in 1831, followed by two others a year later. On January 13, 1836, the government granted official recognition to these three volumes and further authorized the publication of more. The fourth through the seventh volume followed. The fourth, beginning with the decrees issued on December 31, 1830, and ending with those issued on December 31, 1834, was given official sanction by a decree of May 5, 1845. For some reason, however, the fifth and sixth, which together cover a period of five years from January 1, 1835, to December 31, 1840, were not granted official status. The seventh volume is an analytical index-digest to the previous volumes, particularly the fourth and sixth. Eventually, Juan Crisóstomo Nieto picked up where Santos Quirós left off, editing the eighth through the 13th volumes in the series. This portion of the collection covers all laws adopted from 1841 to 1852.⁴

With a longer time span in mind, Juan Oviedo commenced publication in 1861 of what was to become a 16-volume work.⁵ Unlike his predecessors in the field, however, Oviedo employed a different format. His work is divided into the various government ministries and agencies. Sections and subdivisions by subject are alphabetically arranged under each ministry or agency. Although comprehensive and equipped with chronological and subject indexes, the work is somewhat difficult to use.

Between 1860 and 1906 several official volumes were published with varying titles.⁶ Those in the possession of the Library of Congress relate to the laws of 1860, 1862, 1864-65, 1868-76, 1878-79, 1884-93, and 1895-1905. There are no compilations of laws for 1866-67 because this was the period of the Chilean intervention. There are none either for 1894 because all legislation of that year was subsequently annulled. In this series of varying titles, a few volumes were compiled and annotated by Ricardo Aranda.⁷ Dr. Aranda also issued two official

⁴ *Colección de leyes, decretos, y órdenes publicadas en el Perú desde su independencia en el año de 1812 hasta . . .* Lima, Impr. Masías, 1831-54. 13 v. [v. 1-7 edited by Mariano Santos Quirós; v. 8-13 by Juan Crisóstomo Nieto]

⁵ Oviedo, Juan. *ed. Colección de leyes, decretos, y órdenes publicadas en el Perú desde el año 1821 hasta 31 de diciembre de 1859, reimpresa por orden de materias . . .* Lima, F. Bailly, 1861-72. 16 v.

⁶ *Leyes y resoluciones expedidas por los Congresos ordinarios y extraordinarios, 1860-1905.* Lima, 1861?-1906. n.p.

⁷ Aranda, Ricardo, *ed. Leyes y resoluciones expedidas por la Asamblea Constituyente de 1885, coleccionadas y anotadas . . .* Ed. oficial. Lima, Impr. del Universo, de C. Prince, 1855. 70 p.

———. *Leyes y resoluciones expedidas por los Congresos de 1878 y 1879, con un apéndice . . . sobre bancos de emisión y moneda desde 1873 hasta 1886. Coleccionadas y anotadas . . .* Ed. oficial. Lima, Carlos Prince, 1886. 190 p.

editions of the Constitution of 1860. The first and second editions include the laws and decrees enacted through 1893 and 1915, respectively.⁸ The laws and resolutions of the extended legislative session of 1864 to 1865 were collected by Ricardo Belaúnde,⁹ the director of the Senate library and archives.

A collection of laws of 1868 through 1874 is in two volumes. The first volume begins with the text of the Constitution of 1860. The second bears the name of Dr. de la Lama as editor. Both offer explanatory notes.¹⁰

Bibliographical sources in the Library of Congress indicate the existence of contributions from J. Fernando Gazzani¹¹ and Dr. Goitzolo.¹² However, neither appears to have been acquired by the Library.

Other annotated collections are those done by Paulino Fuentes Castro and Ricardo Ríos. Officially authorized by President Piérola under Law of December 27, 1805, that of Dr. Fuentes consists of a total of 15 volumes, several of which are devoted to the full texts of the Code of Military Justice of 1898, the Mining Code of 1900, and the Commercial Code of 1902.¹³ That of Dr. Ríos, on the other hand, is much more extensive and covers legislation from all the ordinary and extraordinary congressional sessions held between 1896 and 1914.¹⁴

Until recently, the most complete source of legislation was the *Anuario de la legislación peruana*. Authorized under a supreme decree of President José Pardo's, dated November 10, 1906, the *Anuario's* first two volumes published in 1907 and 1908 cover the legislative years 1904-5 and 1906-7, respectively. Copies of

———. *Leyes y resoluciones de carácter general y local vigentes en la fecha expedidas por los congresos ordinarios y extraordinarios de 1878-79 y de 1886-87 coleccionadas y anotadas* . . . Lima, Impr. de Universo, 1893. (Declarada oficial el 15 de setiembre de 1893)

———. *Leyes y resoluciones expedidas por los Congresos ordinarios y extraordinarios de [1887-93, 1895-1905] coleccionadas y anotadas* . . . Ed. oficial. Lima, 1891-1906. 12 v.

⁸ ———. *Constitución del Perú con sus reformas hasta 1893. Leyes orgánicas, reglamentos y resoluciones referentes a ellas, coleccionadas y anotadas* . . . Ed. oficial. Lima, Impr. de la H. Cámara de Diputados, 1893; 2.ed. 1916. 906 p.

⁹ Belaúnde, Ricardo, ed. *Leyes y resoluciones expedidas en la legislatura de 1864-65 (ordinaria prorrogada) Recopiladas el año 1911* . . . Ed. de la Cámara de senadores. Lima, Tip. de El Lucero, 1912. 119 p.

¹⁰ *La Constitución del Perú. Leyes y resoluciones dictadas por los congresos de [1868-76]* Lima, Impr. del Estado, 1873-77. 2 v. [v. 2 edited by M.A. de la Lama]

¹¹ Gazzani, J. Fernando. *Leyes y resoluciones*. 1888. n.p.

¹² Goitzolo, Pedro C., ed. *Leyes y resoluciones de los Congresos ordinarios y extraordinarios de 1904 y 1906*. n.d., n.p.

¹³ Fuentes Castro, Paulino, ed. *Nueva legislación peruana; leyes y resoluciones de los congresos anotadas y comentadas* . . . Lima, 1896-1907. 15 v.

¹⁴ Ríos, Ricardo R., ed. *Leyes y resoluciones de los congresos ordinarios y extraordinarios [1896-1914] compiladas, anotadas y concordadas* . . . Lima, 1897-1916. 17 v. in 15.

these two volumes plus copies of the 57 more printed from 1909 to 1965, covering all legislation promulgated from 1908, are with the Library of Congress as of this writing. The Library's original copies of the earlier editions have been out of print for a long time and are therefore rare materials. Whether or not this series¹⁵ is a continuing one cannot be ascertained from the available data.

Two collections dealing with special branches of law which encompass a broad range of topics are incorporated in this chapter. The first¹⁶ is a four-volume compilation by Dr. Angulo Puente Arnao concerning both legislative and administrative enactments related to the Ministerio de Fomento and all of its agencies in the early 1900's. Collected laws in this work relate specifically to industries, agriculture, mining, communications, public or social welfare, and public works. The second¹⁷ is a similar collection by the Ministerio de Hacienda covering all laws within its sphere. This collection was meant to fill a three-year gap in the annual reporting function of the Ministry.

There are a number of compilations which begin with the full text of the constitution and invariably include codes. Works of this type by Drs. Aranda and de la Lama have been described earlier. Other contributions of this nature are traceable to Guillermo Olaechea,¹⁸ Luis Gadea, Tomás Ríos Fajardo,¹⁹ and Eduardo García Calderón.²⁰

García Calderón's first two editions, like Olaechea's and Gadea's single-edition works, begin with the text of the 1919 Constitution, and the last two editions carry the text of the 1933 Constitution. In addition to the full texts of all the codes—civil, civil procedure, criminal procedure, commercial, military, mining, and water—and all important organic laws, Dr. García Calderón includes relevant modifying or complementary laws, decrees, regulations, and resolutions.

In 1939 Manuel Tupiño started what apparently was intended to be a con-

¹⁵ *Anuario de legislación peruana* [1904-] Ed. oficial. Lima, Impr. de La Revista, 1907-(65) 59 v.

¹⁶ Angulo Puente Arnao, Juan, ed. *Compilación de leyes, reglamentos y resoluciones de carácter vigentes del Ministerio de Fomento y sus dependencias, hecha . . . en cumplimiento de la resolución de 21 de junio de 1907*. Lima, Impr. La Industria, 1907. 4 v.

¹⁷ *Leyes, decretos, y resoluciones gubernativas expedidas por este ramo en los años [1913-15]* Lima, Impr. Americana, 1922-29. 3 v.

¹⁸ Olaechea, Guillermo U., ed. *La Constitución del Perú dada por la Asamblea Nacional de 1919. Leyes orgánicas, decretos, reglamentos y resoluciones referentes a ellas hasta 1922*. Publicación oficial. Lima, Impr. Americana, 1922.

¹⁹ Gadea, Luis E., and Tomás Ríos Fajardo, comps. *La Constitución, el Código Penal y las leyes expedidas por la Asamblea*. Lima, Impr. Torres Aguirre, 1920. 184, iv, ii p.

²⁰ García Calderón, Eduardo, ed. *Constitución, códigos y leyes del Perú, recopilados y concordados*. Lima, 1923. 1643 p.; 2.ed. 1929. 1975 p.; 3.ed. 2270 p.; 4.ed. 1942. 2607 p.

tinuing chronological collection of laws, but after completing the first one for that year,²¹ he failed to follow through with additional volumes.

On February 29, 1940, a monthly periodical was launched under the editorship of M. Julio Delgado A.²² Pursuant to Law 1851 of 1936, the editor was authorized to publish financial and economic legislation and to reprint in a digested form the original earlier editions of the *Anuario de legislación peruana* which had gone out of print. During its first year, this periodical became so successful that a draft law was introduced in the lower house of the Peruvian Congress on September 2, 1940, to accord it official status. It evolved into a useful handbook for businessmen, corporations, manufacturers, producers, miners, employees, laborers, and judges. Despite the periodical's immediate success, however, it appears to have been short-lived. So far as it can be ascertained, it ceased publication before the decade was over.

To keep abreast of all developments in the business field, the Merchants Association of Peru began publishing its own official organ²³ in 1922. Although this was meant as a monthly periodical, it subsequently started publishing annual supplements or yearbooks on special fields of law, such as those published in 1937, 1938, and 1939, on labor, taxation, water laws, and irrigation, respectively. At the close of 1941, the monthly periodical featured a legal compendium on a broad range of subjects involving industry, commerce, and finance. Thereafter annual volumes became a regular feature. On the shelves of the Library of Congress is a set of volumes published from 1941 to 1957, covering legislation from 1940 to 1956, and an extra volume with a 1961 imprint covering the preceding year's legislation. No volumes for 1958-59 were located.

Another serial publication appeared in 1942. Originally edited by Oscar Balderrama Tudela and intended to carry purely financial and commercial legislation, this semi-annual publication has since become a reference tool covering all kinds of legislation and including jurisprudence.²⁴ This modernized version has Marcial Ramírez Guarantz as editor in chief and Dr. Montenegro Baca as director. A gap of more than 10 years in the Library of Congress' holdings seems to indicate the inactive status of this publication for that period.

In 1947 and 1949 two more compilations were published. One comes from

²¹ Tupiño, Manuel A., ed. *Leyes, decretos, y resoluciones del Perú al día*. Lima, Libr. é Impr. Gil, S.A., 1938- 1 v.

²² *Revista de legislación peruana*. Lima, año 1, no. 1-, Feb. 29, 1940- (1947?)

²³ *Revista del comercio del Perú; órgano de la Asociación de Comerciantes . . . Compendia de legislación* [1940-] . . . Lima, 1941-

²⁴ *Normas legales; revista de legislación y jurisprudencia*. Lima, año 1, no. 1, June 1, 1942- [Former title: *Revista de legislación financiera y comercial*]

a section of Peru's Finance Ministry dealing with archival matters and relates to the colonial period. It catalogs for historical purposes the period's royal orders, commands, or decrees.²⁵ The other is a simple collection of the decree-laws promulgated in the late forties during Brig. Gen. Manuel Odría's military rule.²⁶

An official congressional compilation was initiated with the publication in 1950 of a volume covering nearly 5,000 laws enacted from 1904 to 1924. This was followed by three more volumes published in 1952, 1955, and 1956, covering the legislation up to the early forties. The first two volumes were published without an index. This was remedied in the fourth volume which, in addition to its own index, carried the indexes for the first two volumes. This ambitious and excellent compilation employed a system of cross-references. This system, along with the inclusion of implementary and/or amendatory laws greatly enhanced the work.²⁷

Today the most complete, systematic, convenient, and easy to use secondary source is an ongoing compilation that was started in 1954.²⁸ Originally a quarterly publication of the Ministry of Justice, it now comes out once every two months and is issued by the National Office of Juridical Affairs under the direction of Carlos Parodi Remón. Laws or decree-laws are grouped together, and administrative orders and resolutions are distributed among the various ministries to which they respectively pertain. With the more recent issues, citations to the primary source, *El Peruano*, are included.

Legal Dictionaries and Indexes

The legal dictionary is an item of encyclopedic nature. It presents a synthesis or abstract of Peruvian law and jurisprudence, arranged alphabetically by subject. It provides the researcher with instant answers, if not outright solutions. Moreover, it leads him to the sources and serves as an index. Some dictionaries which have been described under other subject categories of this guide will be omitted in this section.

Francisco García Calderón was among the early contributors of this type of source material. Following the format of the great Spanish scholar, Joaquín

²⁵ *Reales cédulas, reales órdenes, decretos, autos y bandos que se guardan en el Archivo Histórico*. Lima, 1947. 666 p. (Ministerio de Hacienda y Comercio. Archivo Histórico. Sección Colonial)

²⁶ *Decretos-leyes de la Junta Militar de Gobierno*. Lima, Impr. Garcochea [1949] 124, ii p.

²⁷ *Compilación de la legislación peruana (concordada)*. Lima, Cámara de Diputados, Dirección General Administrativa, 1950-56. 4 v.

²⁸ *Leyes y resoluciones de carácter general de la República del Perú*. Lima, año 1-, no. 1- ; 1. trimestre de 1954.

Escriche y Martín, his dictionary treats principally of the civil legislation as of 1859. However, the supplements to the original work and a subsequent second edition include criminal legislation as well.¹

With the collaboration of Dr. de la Lama, Manuel Atanasio Fuentes published a very ambitious three-volume work of this nature.² The first volume contains legislation on civil matters in an alphabetical arrangement from A to I; the second treats of public law under the same alphabetization and continues the subjects on civil law under letters J to Z; and the third relates to criminal law and procedure. The second volume was reputedly lost during the occupation of Peru by the Chilean forces in January 1881. In 1889 Dr. de la Lama issued a reprint of the third volume.³

Germán Leguía y Martínez' initial dictionary was issued in eight parts, four to a volume, containing extensive, detailed information.⁴ Exiled to Panama from 1924 to 1927, Dr. Leguía continued to work on a second dictionary in that country. This second work relates specifically to Peruvian criminal law and was published posthumously by his son, Jorge Guillermo Leguía.⁵ In 1933 Manuel León Soto y Macedo attempted a series of abstracts or digests of Peruvian legislation. However, after producing just one volume covering subjects beginning with the first two letters of the alphabet,⁶ his efforts came to a halt for unknown reasons.

The painstaking efforts of Luis Angel Aragón culminated in an excellent dictionary relating to leases and the whole range of landlord-tenant relations⁷ and containing doctrinal, statutory, and case law materials. Published in 1967, the work is a continuation of a 1965 work by Aragón on the code of civil pro-

¹ García Calderón, Francisco. *Diccionario de la legislación peruana*. Lima, Impr. del Estado por E. Aranda, 1860-62. 2 v. (Suplementos, 1860-61 in v. 2)

———. *Suplemento que contiene la teoría del derecho penal, y las leyes, decretos y resoluciones de 1862 y 1863*. Lima, 1864. 432 p.; 2.ed., corr. y aum. 1877. [n.p.] another ed. 1879. 2 v.

² Fuentes, Manuel Atanasio, and Miguel Antonio de la Lama. *Diccionario de jurisprudencia y de legislación peruana (parte civil)*. Lima, Impr. del Estado, 1877. 3 v.

³ Lama, Miguel Antonio de la. *Diccionario penal de jurisprudencia. Tomo único*. Lima, Impr. del Universo de Carlos Prince, 1889. 865 p.

⁴ Leguía y Martínez, Germán. *Nuevo diccionario de la legislación peruana*. Lima, Tip. El Lucero, 1914-21. 2 v.

⁵ ———. *Diccionario de la legislación criminal del Perú*. Lima, Libr. é Impr. Gil, 1931. 846 p.

⁶ Soto y Macedo, Manuel León. *Diccionario de la nueva legislación peruana*. Lima, 1933. 1 v.

⁷ Aragón, Luis Angel. *Diccionario jurídico de inquilinato*. Cuzco, Ediciones Idea [1967] 204 p.

cedure, which reputedly had become a favorite handbook of Peruvian courts and law schools. The author hoped that his 1967 work would be as well received as his earlier work, which was completely sold out shortly after its appearance. In 1971 the same author published another work dealing with civil procedure,⁸ which may be a new edition of his 1965 dictionary. However, at the time of this writing copies of this recent work were not available for examination.

Peruvian authors generally prefer to issue indexes to their own individual works. There are, however, a few of these research tools which were published independently of any work. Because these old indexes are limited in scope and lack continuity, they are suitable only for a specific period and a particular set of laws. No known new indexes of Peruvian imprint have appeared recently. Consequently, for the researcher who is used to poring over systematic, cumulative, and facilitative indexes to find his sources, working with Peruvian legal literature could be an awesome, if not impossible, task.

Juan Crisóstomo Nieto produced a comprehensive chronological and subject index covering the postindependence period up to 1864.⁹ This index, however, is actually volume 7 of Dr. Nieto's own collection of laws of the same year.

In 1916 Juan Francisco Olivo tried his hand at indexing Peruvian laws and resolutions.¹⁰ Several years later, Dr. Olivo followed through with a second edition in two volumes. These indexes contain citations to *El Peruano*, *Anuario de legislación*, and the law collection of Dr. Ríos. Dr. Olivo is credited with three indexes altogether. His last was published in 1930 and refers to the laws and resolutions of 1927-29.¹¹ This work, however, is believed to be part of a series that was started in 1929 but never completed. The first volume in this projected series was edited by Tomás Ríos Fajardo and José A. Bonilla and covers the years from 1919 to 1927.

A congressionally prepared index also appeared in 1919.¹² This one details the legislation dating from 1904.

In response to internal reference needs, the Law Library of the Library of

⁸ ———. *Diccionario jurídico: derecho procesal civil*. Cuzco, Ediciones Idea [1971] 271 p.

⁹ Nieto, Juan Crisóstomo. *Índice general de las leyes, decretos y supremas resoluciones expedidas en el Perú desde el principio de su independencia*. [Huaraz] Impr. de la Colección, 1864. 894 p.

¹⁰ Olivo, Juan Francisco. *Índice de leyes y resoluciones legislativas . . .* Lima, Empr. Tip. Lártiga, 1916. n.p.; 2.ed., corr. y ampliada. 1919-20. 2 v.

¹¹ *Índice de las leyes y resoluciones dictados por las legislaturas . . .* Ed. oficial. Lima, Edit. Mercurio, 1929-30. 2 v.

¹² *Índice de las leyes y resoluciones numeradas, 1904-1919*. Lima, Cámara de Diputados, 1919. 421 p.

Congress initiated in the late forties a card-indexing system of primary legislation of all the Latin American countries, including that of Peru. After cataloging 10 years of Latin American legislation, it was decided that this card-indexing system should be shared with the public. In 1961, the card entries for 1950-60 were reproduced by G. K. Hall Company of Boston in two large folio volumes.¹³ First and second supplements subsequently appeared covering the years 1961-65 and 1966-70, respectively. Undoubtedly an invaluable research tool, this ongoing series should help relieve the difficulty of researching Peruvian legislation dating from 1950.

¹³ U.S. Library of Congress. Hispanic Law Division. *Index to Latin American Legislation, 1950-1960*. Boston, G. K. Hall [1961] 2 v.

———. ———. *First Supplement, 1961-1965*. Boston, G. K. Hall, 1970. 2 v.

———. ———. *Second Supplement, 1966-1970*. Boston, G. K. Hall, 1973. 2 v.

Court Reports and Digests

There is much that could be improved in the court reporting system of Peru. As a civil law country, it does not subscribe to the common law jurisdiction's rule of stare decisis which holds that a decision of a court of last resort constitutes binding precedent (case law). In view of this, there are those who would undoubtedly suggest that there is no need for improvement in this field. However, the nature and thrust of some of the works described in this chapter would seem to refute such a suggestion.

Civil law principles recognize what is known in Spanish as jurisprudencia, which means the tendency of the courts to rule more or less uniformly, through a series of decisions, upon an identical or similar statement of facts. Although not binding, jurisprudencia is generally persuasive. Thus, it is not unusual for legal practitioners in civil law jurisdictions to cite court decisions in point to strengthen their arguments. As a matter of practical necessity, therefore, Peru would do well to follow the example of Argentina, a civil law country, which has a comparatively elaborate and sophisticated court reporting system.

To begin with, an article by the eminent jurist Dr. Arenas y Loayza is noted as an interesting and enlightening early commentary on Peru's national jurisprudencia.¹

Most of the court reports in Peru relate to specific subjects. Many of these have been cited and described in other chapters of the guide and therefore will not be repeated in this chapter.

Before the adoption of an official organ for the Supreme Court, no serial publication existed to report the decisions of that court. However, incomplete collections of advisory opinions of the court's fiscales were made from time to time. Alfredo Gastón collected the opinions of Manuel Toribio Ureta and José

¹ Arenas y Loayza, Carlos. "La jurisprudencia nacional." In *La Revista del Foro*, año XIII, pp. 94-103.

Gregorio Paz Soldán for the years 1840 to 1871.² Narcisco de Aramburú³ and Juan José Calle collected their own opinions as former fiscales of the Supreme Court. The latter's collection is very extensive, covering those opinions he had rendered between 1891 and 1902 during his incumbency.⁴

The Supreme Court of Judicial Responsibility (Suprema Tribunal de Responsabilidad Judicial), created by Law of January 7, 1865, and vested with both original and appellate jurisdiction over the civil and criminal liability of Supreme Court justices, also issued a volume of its decisions in 1880 under the auspices of José Antonio García i García, its chief justice at the time.⁵

It was not until April 1, 1905, that the Supreme Court adopted an official organ for reporting court decisions and resolutions. On that date, President José Pardo decreed that the more important opinions and decisions be collected and published annually commencing within the following year. Augusto S. Abarracín was designated to collect the materials from 1871 when the court was reorganized. Dr. Abarracín was succeeded on his death by Paulino Fuentes Castro. The work of publishing the decisions for the years back to 1871 was to be done simultaneously with those decisions of 1905 and the following years. The current decisions were to be compiled and edited by Máximo Cisneros and Oscar Cebrián. There were, in effect, two ongoing series. As finally published, the first series consists of six volumes which appeared between 1906 and 1930 covering the Supreme Court's decisions from 1871 to 1889. For some reason, the last volume, which was to cover the years 1899 to 1905 in this first series, was never published. The second series started again with volume one; two volumes appeared in 1906, one covering the decisions for 1905 and the other for 1906. Succeeding volumes have appeared more or less regularly since. The first three volumes in this series bear the title *Anales Judiciales del Perú*. Subsequent volumes were called *Anales Judiciales de la Corte Suprema del Perú*. Today, the series has a running title of *Anales Judiciales de la Corte Suprema de Justicia de la República*.⁶

² Gastón, Alfredo, ed. *Compilación de las vistas fiscales que en materia judicial y administrativa se han expedido en el Perú; desde el año de 1840 hasta 1871, por José Gregorio Paz Soldán y Manuel Toribio Ureta*. Lima, Impr. del Estado, 1873-75. 2 v.

³ Aramburú, Narcisco de. *Vistas fiscales, 1891-92*. Lima. Impr. de El Diario Judicial, 1893. 128 p.

⁴ Calle, Juan José. *Vistas fiscales, 1891-1902*. Lima, Impr. del Estado, 1906-18. 3 v.

⁵ *Anales del Supremo Tribunal de Responsabilidad Judicial por su presidente . . . José Antonio García i García*. Lima, Impr. del Teatro, 1880. 292 p.

⁶ *Anales judiciales de la Corte Suprema de Justicia [1871-98]* Publicación oficial. Lima, 1906-30. 6 v.

Dr. Seoane published a selection of opinions handed down from 1919 to 1920.⁷ Oscar C. Barrós, former chief justice of the Supreme Court, issued a collection of his decisions covering the years 1901-24.⁸ A second volume of the same work contains material related to Dr. Barrós' tenure as a magistrate.

Two serial publications devote much of their space to case law. One, the *Revista de los Tribunales*, was a weekly designed to report court decisions as they were handed down. Based on the Library of Congress holdings, this periodical appears to have ceased publication in 1945.⁹ The other serial, the *Revista de Jurisprudencia Peruana*, a monthly, carries a selection of civil, criminal, administrative, labor, agrarian, and other cases, in addition to other material, and is an ongoing series published currently under the direction of Eugenia A. de Deza.¹⁰ It is interesting to note that Peru's earlier law journals, particularly *La Gaceta Judicial* (1861, 1874-76, and 1891) and *Boletín Judicial* (1888), are the precursors of the Peruvian periodical court reporting service which has continued to flourish to date (see chapter on legal periodicals).

There have been a number of attempts to digest and index court decisions aimed at maintaining a fixed body of case law or jurisprudencia. The earliest known attempt was a modest one undertaken by the eminent jurist Dr. Pacheco.¹¹ More than 10 years later Manuel A. Fuentes followed with a four-volume work.¹² Still later, Drs. Portugal¹³ and Caveró each contributed a compilation, although Dr. Caveró limited his to the criminal field.¹⁴ The Supreme Court itself issued a special collection of decisions from 1913 to 1915 involving election cases.¹⁵

Works in the index-digest format were made available by Chief Justice

⁷ Seoane, Guillermo A. *Dictámenes fiscales . . . con importantes apéndices*. Lima, Impr. Gloria, 1919-20. 2 v.

⁸ Barrós, Oscar C. *Algunas ejecutorias en el ejercicio de mi profesión [1901 á 1924]* Lima, 1927-37. 2 v.

⁹ *Revista de los Tribunales*. Lima, año 1, no. 1, May 16, 1931-1945. 14 v.

¹⁰ *Revista de jurisprudencia peruana*. Lima, año 1, no. 1, Oct. 1943-.

¹¹ Pacheco, Toribio. *Repertorio Judicial*. 1864. n.p.

¹² Fuentes, Manuel A. *Repertorio Judicial*. 1875. 4 v.

¹³ Portugal, Manuel Pío. *Jurisprudencia de los tribunales de justicia del Perú*. Lima, 1902-4. 2 v.

¹⁴ Caveró, José Salvador. *Jurisprudencia penal. Recopilación de ejecutorias (1892-1901)* Lima, Impr. La Industria, 1904. 686 p.

¹⁵ *Jurisprudencia electoral; fallos de la excma. Corte Suprema*. Lima, Libr. La Académica, J. Boix, 1913. 264 p.

—; *fallos, 1913-1915*. Ed. oficial, autorizada. Lima, Empr. Tipográfica, 1915. 267, iv p.

Eguiguren¹⁶ and Juan José del Pino González.¹⁷ This kind of case law compilation was also employed by Dr. Aparicio y Gómez Sánchez in one entire volume—the eighth—in his series of annotated works on the civil code.¹⁸

In 1940 David Mújica Ortiz published an index to Supreme Court decisions.¹⁹ Although meant to be a continuing project, it apparently never went beyond this initial volume. Three years later, the case law field gained another advocate in the person of Helí Palomino Arana, whose index contains cross-references to related legislation.²⁰ The same author contributed a similar work in the sixties, and this is cited under the chapter on criminal law.

There are also other categories of case law literature. There is, for instance, an interesting work by Carlos Aurelio León in which judicial interpretations of code provisions are digested.²¹ Another is a monograph by Humberto Borja García y Urrutia which demonstrates the value and influence of judicial decisions involving the civil code provisions.²² A third, contributed in 1953 by Julio Villegas, retired fiscal of the Supreme Court of Peru, is a selective compilation of resolutions and landmark decisions on significant cases heard by the Superior Court of Lima and the Supreme Court of Peru, such as the latter's opinion on balancing the freedom of the press against the security and interests of the state.²³

The cases in 1950 relating to the different civil code provisions were collected, digested, and indexed chronologically and by subject matter by Miguel Pacheco Medina.²⁴ This author's other work involving case law may be found in the chapter on commercial law.

¹⁶ Eguiguren, Francisco J. *Prontuario de ejecutorias, circulares y acuerdos de la excma. Corte Suprema de Justicia*. Lima, Sanmartí y Cía., 1915. 30 p.

¹⁷ Pino González, Juan José del. *Casos de jurisprudencia práctica*. Lima, 1921. 138 p.

¹⁸ Aparicio y Gómez Sánchez, Germán. *Código Civil; Concordancias. Tomo VIII. Jurisprudencia Civil*. Lima, 1941. 1 v.

¹⁹ Mújica Ortiz, David. *Índice de ejecutorias supremas*. Abancay, Cía. de Impresiones y Publicidad, 1940. 1 v.

²⁰ Palomino Arana, Helí. *Repertorio de la jurisprudencia peruana (compendio alfabético de las ejecutorias de la Corte Suprema concordadas con la legislación vigente)*. Lima [Callao, Empr. Edit. de El Callao] 1944. 257 p.

²¹ León, Carlos Aurelio. *Código de jurisprudencia de los tribunales del Perú*. Lima, Impr. C. Ruiz y Cía., 1928. 2 v. in 1.

²² Borja García y Urrutia, Humberto. *La obra de la jurisprudencia peruana y el código civil*. Lima, Empr. Tip. Unión A. Giaccone y Cía., 1918. 83 p.

²³ Villegas, Julio. *El ideal de la justicia; dictámenes, resoluciones, y comentario*. Lima, 1953. 94 p.

²⁴ Pacheco Medina, Miguel, ed. *Código Civil, Jurisprudencia*. Lima, 1950- v.

The most ambitious work to date appears to be that of José Montenegro Baca, whose case compilation on taxation, cited in the chapter on administrative law, has made him a familiar contributor in this field. Consisting of a total of 10 volumes, the present work deals with procedural as well as substantive aspects of civil law and covers a period of 23 years, from 1936 to 1959.²⁵ Subjects dealt with by the multivolume work are divided according to the same sequence followed in the text of the code of civil procedure. Consultation is facilitated by the sixth and seventh volumes of the work which contain the indexes to volumes 1-5 and cover the years 1936-53 and 1953-55, respectively, and volume 10, which includes the indexes for volumes 8-10 and covers the years 1955-59.

Another relatively recent work of the same caliber is that of Roberto Postigo Cáceres, a familiar contributor whose other case law work has been previously described in the chapter on commercial law. His court digests consist of five volumes involving subjects falling under letters A through L. Supreme Court decisions found in the volumes fall under two general categories—those decided by the court in accordance with the opinions of the Supreme Court fiscal and those that differ from them. The decisions relate to the decades of the forties and the fifties. It is hoped that more volumes will be added to the present number.²⁶

²⁵ Montenegro Baca, José, *comp. Ejecutorias supremas de derecho civil peruano*. [Trujillo, Perú, Libr. y Edit. Bolivariana, 1953-61. 10 v.

²⁶ Postigo Cáceres, Roberto, *ed. Jurisprudencia; extractos sistematizados de las resoluciones de la Corte Suprema de Justicia y de sus dictámenes fiscales*. Arequipa, 1954- 5 v.

Legal Periodicals

Peruvian legal thought finds ample expression through the country's legal and paralegal journals and periodicals. Many of these publications print excellent articles and essays. They also carry legislation and case law and could serve as secondary sources, especially when researchers experience inordinate delays in the acquisition of primary or official sources. Publication of periodicals has always been abundant, although many of these publications have been short-lived and have tended to duplicate one another on matters of case law and legislation.

Tracing the origins and life span of certain periodicals is difficult. Some appear with auspicious announcements about their plans and publication scheme only to disappear suddenly without explanation. In some cases, certain issues break away from the original regularity or bear numbers that are not in sequence. Identical or similar titles may appear years apart without explanation. Because of these difficulties certain rules have been established for the development of this chapter. First, unexplained gaps in the holdings of the Library of Congress are usually interpreted as indicating a temporary suspension in publication, and second, the absence of issues for an unusual length of time following the last known issue is generally regarded as a cessation of publication.

Two of the earliest journals located bear an identical title, *Gaceta de los Tribunales*.¹ Published a decade apart, the two appear to be unrelated to each other. Three others, also published independently of one another but given the same title, *La Gaceta Judicial*,² appeared in the mid- and late-1800's. All five were of brief duration.

¹ *Gaceta de los tribunales*. Lima, Impr. de J. Masías, año 1, no. 1, June 27, 1846.

———. Lima, Impr. de Justo Montoya, año 1, nos. 1-31, Sept. 15, 1855-Aug. 29, 1857.

² *La Gaceta Judicial*. Lima, v. 1-4, 1856(?) - 1859.

———. *Diario de legislación y jurisprudencia*. Lima, Impr. del Estado, tomo 1, no. 1-tomo 6, no. 73, Jan. 7, 1874-Sept. 30, 1876.

———. *Diario de doctrina, legislación, jurisprudencia y crónica* (órgano del ilustre Colegio de Abogados) Lima, año 1, no. 1-año 2, no. 499, Mar. 18, 1891-1893.

In 1862 a San Marcos University magazine called *Anales*³ was founded to serve as the publication outlet for law theses and professorial legal articles. Some four decades and 32 volumes later, it was superseded by *Revista Universitaria*⁴ which served the same purposes until the university's law school decided to publish its own official organ (*infra*). When the publication of law theses as monographs came into vogue, law students became less dependent on the university periodicals.

The Lima Bar Association initiated a weekly journal in 1885 to carry selected legislation and court decisions, together with editorials and notes of interest, to the bench and bar. Publication of this journal was suspended between December 1889 and April 1894. Altogether, it enjoyed a run of 19 years before it ceased publication in 1909.⁵

A journal edited by a commission on procedural reforms was issued in Lima over a period of four years.⁶

One of Peru's foremost law reviews or journals, *La Revista del Foro*, is another publication of the Lima Bar Association.⁷ Now in its 58th year, this scholarly review has not been restricted to contributions by Peruvian legal scholars. In addition to leading articles, the journal reports on legal activities of the judiciary as well as the domestic and foreign activities of the members of the bar, new legislation, bar association meetings and proceedings, and a host of other matters which are generally of interest to both students and professionals. The journal is noted for its excellent editorials, incisive commentary on landmark decisions, and good book reviews.

Among the journals issued by local bar associations in other parts of Peru, that of the Arequipa Bar Association appears to be the most noteworthy.⁸ A monthly commenced in 1914; it was subsequently published in the late forties under the direction of Antero Peralta Vázquez. Other journals, sometimes called bulletins, were published by the bar associations of Cuzco,⁹ Ayacucho,¹⁰

³ *Anales de la Universidad Mayor de San Marcos de Lima*. Lima. Jan. 11, 1862-1906. 32 v.

⁴ *Revista Universitaria*. 1906-30, 1935-?

⁵ *El derecho; revista de jurisprudencia y legislación*. Lima. año 1, no. 1-año 19, no. 370, Dec. 12, 1885-Dec. 1909. 14 v.

⁶ *Revista Jurídica* (Comité de Reforma Procesal). Lima, año 1, no. 1- año 4, no. 11, 1904-8.

⁷ *La Revista del foro; órgano del Colegio de Abogados*. Lima. año 1, 1914-.

⁸ *El derecho, órgano del Colegio de Abogados del Arequipa*. Arequipa, año 1, 1914-?

⁹ *Revista del derecho; órgano del Colegio de Abogados del Cuzco*. Cuzco, año 1, 1917-?

¹⁰ *El Derecho*. Ayacucho, 1918-34. 10 v.

Lambayeque,¹¹ Ancash,¹² Puno,¹³ Junín,¹⁴ and La Libertad.¹⁵

The various journals of the faculty of law of San Marcos University are outstanding reviews, much like the Lima Bar Association's journal. The first experiment of the university law school was a bimonthly of which only three issues were ever published.¹⁶ The next differed slightly in title and was published from 1928 to 1934.¹⁷ There appears to be no law journal of any kind published by the university in 1935. However, a new review was launched the following year and has been appearing regularly since then three times annually.¹⁸ An excellent periodical, it carries legal articles of general interest, commentary on new legislation and court decisions, law school news, bibliographical notes and reviews, and international legal news.

In 1928 another *La Gaceta Judicial*, unrelated to the three periodicals of the same title described earlier, commenced publication under the direction of Edgardo Rebagliati. It lasted only six months.¹⁹

Two years later a weekly journal devoted to reporting court decisions and learned opinion was founded by J. F. Caballero y Caballero.²⁰ It enjoyed a run of 15 years or possibly more. No definite information is available regarding its actual duration.

A periodical which made its first appearance in Cuzco in July 1938 devotes

¹¹ *Boletín judicial; órgano del Colegio de Abogados de Lambayeque*. Chiclayo, Aug. 31, 1924-?

El foro; publicación mensual del Colegio de Abogados de Lambayeque. Chiclayo, v. 1, 1935/36-?

¹² *El foro de Ancash; órgano del Colegio de Abogados*. Huarás, v. 1, no. 1, 1926-?

¹³ *Revista Judicial* (Colegio de Abogados de Puno) Apr. 1927-May 1928, Aug. 1930-May 1933.

¹⁴ *El derecho, órgano del Colegio de Abogados de Junín*. Huancayo, año 1, no. 1, Jan. 1940-?

¹⁵ *Revista jurídica; órgano del Colegio de Abogados de La Libertad*. Trujillo, año 1, no. 1, Aug. 6, 1924-?

¹⁶ *Revista de ciencias jurídicas y sociales* (Univ. Mayor de San Marcos; Facultad de Derecho y Ciencias) v. 1, no. 1-3, July-Nov. 1927.

¹⁷ *Revista peruana de ciencias jurídicas y sociales* (Univ. Mayor de San Marcos: Facultad de Derecho y Ciencias) v. 1-6, no. 1, Oct. 1928-Oct. 1934.

¹⁸ *Revista de derecho y ciencias políticas, órgano de la Facultad de Derecho*. Año 1, no. 1, 1936-?

¹⁹ *Gaceta Judicial*. Lima, v. 1, nos. 1-6, May-Oct. 1928.

²⁰ *Revista de los tribunales*. Lima, año 1, no. 1, 1931-?

its contents to matters involving for the most part philosophy and theory of law.²¹ After appearing regularly for over a year, it ceased publication but in October 1944 resumed. No other issue, however, has been located for the ensuing years.

The prestigious Peruvian Society of International Law, based in Lima, is the publisher of an ongoing international quarterly review.²² Begun in 1941, this journal carries articles not only on international law and relations but also on relevant local administrative matters. It features a calendar of events with an international perspective and reproduces documents of transnational interest as well as pertinent Peruvian legislation.

Two seminar groups of San Marcos University, one involved in economics and finance²³ and the other in law,²⁴ each published a series of periodicals to cover their respective fields. Neither department, however, appears to have continued the practice after July 1943.

In 1942 a law review was published under the direction of Julio C. Villegas;²⁵ although intended as a bimonthly, the review did not come out regularly. In the following year, a small journal, *Debates*,²⁶ was sponsored by the Javier Prado Juridical Association as a serial publication, but like the journal published the year earlier, it came out irregularly. So far as it can be ascertained neither journal published very long.

It was about this time that the *Revista de Jurisprudencia Peruana* was launched. This is described, together with another periodical, *Normas Legales*, in the preceding chapter on court reports and digests. Exactly a year after the inauguration of the *Revista*, the Catholic University's Faculty of Law commenced publication of its own law review which has proved to be of immense value and, fortunately, is among those that are still active.²⁷

The year 1945 saw the introduction of three noteworthy legal periodicals. A

²¹ *Revista de filosofía i derecho*. Cuzco, año 1, no. 1-8, July 1938-July/Sept. 1939: nos. 9/10, Oct. 1944.

²² *Revista peruana de derecho internacional, órgano de la Sociedad de derecho internacional*. Lima. Impr. Torres Aguirre. año 1, no. 1. July 1941-.

²³ *Boletín de legislación y jurisprudencia del Perú, órgano del Seminario de Economía y Legislación*. Año 1, no. 1-11, June 6, 1942-1943.

²⁴ *Boletín del Seminario de Derecho* (Facultad de Derecho de la Univ. Nacional Mayor de San Marcos). Lima, año 1, no. 1-año 3, no. 8, July 1941-Jan./July 1943.

²⁵ *Revista peruana de derecho*. Lima, año 1, no. 1-año 2, nos. 7/8, May 1942-July/Dec. 1944.

²⁶ *Debates. Revista de la Asociación Jurídica Javier Prado*. Lima. año 1, no. 1. June 1943-?

²⁷ *Derecho, órgano del Seminario de la Facultad de Derecho, Univ. Católica del Perú*. Lima, año 1, no. 1, Oct. 1944-.

small monthly publication, *Legislación al Día*, carried brief articles on law and devoted a section to the texts of laws and decrees.²⁸ A fortnightly publication, printed in tabloid form, specialized in the legal rights of women vis-à-vis the domestic and international scenes.²⁹ Dr. Percy MacLean y Estenós, then president of the Instituto Peruano de Derecho Procesal, a group of Spanish and Latin American scholars devoted to the study of procedural laws in general, directed a journal covering procedural matters of a civil, criminal, and administrative nature.³⁰

In 1946 two more periodicals appeared. One, devoted to criminal law, was issued quarterly under the direction of Julio Altmann Smythe.³¹ The other was a small Saturday weekly, devoted entirely to legislation and Supreme Court decisions, which made its debut on March 16 of the same year.³² Its editor was Oscar Escalona Centeneo. Presumably, all five of these source materials are no longer in existence.

During the last two decades, the list of periodicals continued to grow, although the pattern of ephemeral ones outnumbering the more permanent ones remained the rule. The most impressive of these new items first appeared in 1950.³³ Its initial issue and all those following through the late sixties were published under the direction of Julio Ayasta González and a board of consultants with impressive credentials. Starting in 1955 the case law section of this periodical was divided, for easier consultation, into three general subject categories—civil (sometimes combined with commercial), penal, and labor. The last issue located bears a 1968 imprint date.

The importance that mining, especially petroleum, has played in the political and economic life of Peru is reflected in the publication of two periodicals devoted specifically to chronicling the legal developments in that field. One initially appeared in October 1952³⁴ and continued to be published rather irregularly up to April 1959. It is interesting to note that in 1970, another

²⁸ *Legislación al día. Revista de legislación y jurisprudencia*. Año 1, no. 1, Mar. 1945-?

²⁹ *Derechos iguales, órgano del Comité Nacional por Derechos Civiles y Políticos de la Mujer*. Año 1, no. 1, May 1945-?

³⁰ *Revista peruana de ciencias jurídicas*. Huancayo, Junín, año 1, no. 1, May/July 1945-?

³¹ *Revista penal y de tutela, órgano de la Dirección General de Establecimientos Penales y de Tutela*. Lima, año 1, no. 1, Mar.-June, 1946-?

³² *El derecho; revista de legislación y jurisprudencia*. Lima, año 1, no. 1, Mar. 16, 1946-?

³³ *Revista jurídica del Peru*. Lima, 1950-1968(?).

³⁴ *Revista de derecho minero, órgano del Instituto Nacional de Derecho de Minería Petróleo*. Lima, Oct. 1952-Oct. 1959(?).

publication, called simply *Minería y petróleo*, came into being.³⁵ Since the later one is unavailable for examination at this writing, it is difficult to determine whether or not it is a continuation of the 1952 material. In any case, there is every reason to believe that the 1970 series is an ongoing one.

A journal on police activities and all matters relating to law and order, including communism and subversive acts, appeared presumably much earlier than the holdings of the Library of Congress seem to indicate. The Library's holdings show all issues for 1953.³⁶ The 1953 issues, however, are marked año 18 which should indicate that the periodical is a continuation of an earlier series. Examination of all the available issues indicates that the periodical continued through 1954, was suspended in 1955, resumed irregularly in 1956, was suspended again from 1957 to 1959, and once again revived in 1961 through June 1963.

In 1962 Enrique de Rávago, president of a publishing firm bearing his name, launched a periodical designed to stimulate legal thinking and writing. The first issue for March-June 1962 looked very promising. In addition to pertinent editorials, it includes learned doctrine, legislation, and also speeches of jurists and such legal scholars as Roberto Garmendia, who was then chief justice of the Peruvian Supreme Court. Although the journal was meant to be published every four months, the next two issues did not appear until January of 1963 and 1964.³⁷ Thereafter, the publishing venture must have ended.

Another ephemeral journal is that of the National University of San Antonio Abad in Cuzco. A January 1964 issue shows interesting editorials and other relevant materials on the first convention of the faculties of law of Peruvian universities. This particular issue is marked no. 2, which suggests that a first issue preceded it. Edited by a committee headed by Carlos Ferdinand Cuadros Villena, dean of the Cuzco Law School, the periodical appeared irregularly through October 1966.³⁸

Two periodicals which came out in 1965³⁹ and 1970⁴⁰ but subsequently disappeared are concerned with the special field of labor. One is entitled *Revista*

³⁵ *Minería y petróleo* (Sociedad Nacional de Minería y Petróleo) Lima, 1970.

³⁶ *Revista de Policía Técnica*. Lima, 195(?) - 1963(?).

³⁷ *Advocatus. Doctrina, legislación y jurisprudencia*. Lima, Mar./June 1962-Jan. 1964. 3 v.

³⁸ *Revista de la Facultad de Derecho* (Universidad Nacional Antonio Abad) Cuzco, 1963(?) - 1966.

³⁹ *Revista de derecho del trabajo* (Univ. Nacional Mayor de San Marcos, Instituto Peruana de Derecho de Trabajo y de la Seguridad Social) Lima, June 1965-Oct. 1965. 1 v.

⁴⁰ *Revista de derecho del trabajo y de la seguridad social* (Asociación Peruana del Derecho del Trabajo y de la Seguridad Social) Lima, Jan.-June 1970-.

de Derecho del Trabajo and lasted through three issues for June, July, and October of the year of its founding. The other, *Revista de Derecho del Trabajo y de la Seguridad Social*, could be a continuation of the 1965 periodical. This possibility exists, although the maiden issue of the latter is marked volume 1. In any event, semestral issues which are expected to follow might shed light on whether or not there is indeed any connection between the two.

The National University of Trujillo started a series dealing with law, in particular, and political and social sciences in general.⁴¹ Available bibliographical sources do not indicate with any certainty the actual date of the series' inauguration. However, examination of the available materials seems to trace it to the mid-sixties. Initiated under the able guidance of Dr. Montenegro Baca, the periodical, unfortunately, appears to have been last published in 1968.

The most recent item located does not fit specifically into the traditional concept of a legal periodical, but is more of a newsletter for lawyers.⁴² Susana Solano, president of the Peruvian Federation of Women Lawyers, appears to have inspired and directed the publication of this type of material. A sample issue for 1970 suggests that the publication is designed to focus attention not only on women lawyers but also on other women, regardless of their vocation. In this particular issue, the newsletter deals with the role of Mrs. Patricia Nixon, the First Lady of the United States, in North American relief efforts during the disastrous Peruvian earthquake of 1970 and reports on the federation's activities.

⁴¹ *Revista de derecho y ciencias políticas y sociales* (Univ. Nacional de Trujillo) Trujillo, 196(?) - 1968.

⁴² *Boletín de la Federación Peruana de Abogadas*. Lima, 197(?) -

Bibliographies

Despite a government policy that encourages bibliographical work, there is an apparent lack of interest among Peruvian scholars in devoting their time and energies to it. This is particularly discernible in the field of law. There are only a few Peruvian bibliographies devoted exclusively to legal subjects. For the most part, legal bibliographies are an integral part of general bibliographies. Invariably one who needs more extensive and exhaustive research may have to depend largely on bibliographies or brief lists of works included at the end of most Peruvian legal treatises, monographs, and textbooks.

Presumably because many bibliographical sources have ceased to be published, a few pre-20th-century general bibliographies—some with a sprinkling of legal materials—have been reprinted. To illustrate, a two-volume Peruvian work originally printed in Chile in 1896 was deemed worthy of reprinting in 1970.¹ A product of the painstaking efforts of Gabriel René-Moreno covers all works of four pages or more in the collections of the Biblioteca del Instituto Nacional, of which the bibliographer was director, and the Biblioteca Nacional. They include books and pamphlets on any subject by Peruvian authors and books and pamphlets relating to Peru by foreign authors. Scattered throughout are several items of a legal nature.

A bibliography on civil law may be found in the ninth volume of Dr. Aparicio y Gómez Sánchez' extensive work on the civil code.² This covers works relating to the draft civil codes as well as commentaries and annotated works on the codes themselves. It also covers treatises, law school theses, literature found in law journals, treaties, and conventions on conflict of law problems (private inter-

¹ René-Moreno, Gabriel. *Apuntes para un catálogo de impresos*. Naarden, Anton W. Van Bekhoven, 1970. 2 v. (Biblioteca Peruana) [Reprint of 1896 Santiago de Chile edition]

² Aparicio y Gómez Sánchez, Germán. *Código Civil. Concordancias*. Lima, Tall. de Linotipia, 1941. p. 7-279. [Included in v. 9]

national law), and a selection of foreign literature for comparative purposes. An index to names is found at the end of the volume. An excellent legal bibliography, it is one of the best in existence.

In July 1923 San Marcos University's Central Library inaugurated a series of so-called bibliographical bulletins.³ Occasionally, legal bibliographies would appear in the annual general bibliographies of this series. In 1928, for instance, the *Boletín* featured Enrique Dammert Elguera's work on administrative law,⁴ which is essentially a bibliography on Peru's official gazettes, collections of laws, and government publications, all dating back to a very early period in Peru's history. Other examples of legal bibliographies in this series include José Guillermo Leguía's listing of all the works of the eminent jurist and codifier Dr. Vidaurre y Encalada,⁵ Amalia Cavego Mariategui's compilation of titles of all law school theses which had been published in the San Marcos University review,⁶ and the joint work on international law by Drs. Urgateche and Pareja Paz-Soldán.⁷ Federico Schwab's books and pamphlets for 1940-41 which appeared in the same series but were published separately,⁸ and his updated edition to cover materials for 1943-44,⁹ may be cited as further illustrations because they contain a few items of legal interest. A last and worthy example is Dagoberto García Ramos' and Alberto Benavides Balbín's bibliography on law and political science for the period 1936-50, which was eventually published independently in monograph form.¹⁰

Two other bibliographies dealing exclusively with law school theses were published separately in 1942¹¹ and 1944.¹² The later one appears to be an

³ *Boletín bibliográfico, publicado por la Biblioteca de la Universidad Mayor de San Marcos*. Lima, v. 1, no. 1, July 1923-?

⁴ Dammert Elguera, Enrique. "Contribución a la bibliografía del derecho administrativo peruano." In *Boletín Bibliográfico* (Lima) Dec. 1928, p. 317-342.

⁵ Leguía, José Guillermo. "Contribución a la bibliografía de Manuel Lorenzo de Vidaurre y Encalada." In *Boletín Bibliográfico* (Lima) Sept. 1928, p. 266-275.

⁶ Cavego Mariategui, Amalia. "Índice de las tesis publicadas en los Anales Universitarias." In *Boletín Bibliográfico* (Lima) June 1944, p. 187-198.

⁷ Urgateche, Pedro, and José Pareja Paz-Soldán. "Al servicio de una bibliografía de historia internacional y diplomática del Perú." In *Boletín Bibliográfico* (Lima) Dec. 1942, p. 141-152.

⁸ Schwab, Federico. *Bibliografía de libros y folletos peruanos 1940-1941*. Lima, Compañía de Impresiones y Publicidad, 1942. 109 p.

⁹ ———. "Bibliografía de libros y folletos publicados en 1943 y 1944." In *Boletín Bibliográfico* (Lima) June 1944, p. 103-148.

¹⁰ García Ramos, Dagoberto, and Alberto Benavides Balbín. *Bibliografía de derecho y ciencias políticas, 1936-1950*. Lima, Compañía de Impresiones y Publicidad, 1950. 111 p.

¹¹ Universidad Nacional Mayor de San Marcos. *Catálogo de tesis de la Facultad de Derecho*. Lima, 1942. 88 p.

¹² ———. ———. [Lima] 1944. 149 p.

enlarged version of the first one and consists of all theses written by San Marcos University law students during a period of 60 years. It uses such broad headings as civil law, penal law, procedure, public international law, and administrative law which are sometimes broken down into various subtopics.

Since 1945 an annual bibliography of Peru's literary output, with a section on legislation and legal studies, has been published by the National Library of Peru.¹³ The editions published from 1945 to 1959, covering Peruvian works from 1943 to 1954, bear the name of Alberto Tauro as editor. According to available data, an edition covering the 1964-66 output has been published but has yet to be acquired by the Library of Congress.

Other library publications in which occasional legal items may be located are the bulletins or catalogs of the library of the Chamber of Deputies, which César Fernandini, the chamber's librarian, started issuing quarterly in the early forties.¹⁴ Another is a catalog of the library of the Club Nacional which has sections devoted to the many phases of international law and general legal reference works.¹⁵

The *Handbook of Latin American Studies* of the U.S. Library of Congress¹⁶ includes items of Peruvian legal literature in its section on law. Helen Lord Clagett, for many years the Library of Congress' resident expert on Latin American law, was the handbook's contributing editor to its law section. Since her retirement in 1971, the handbook has not been devoting a special section to law, although some legal items are still carried under such sections as economics or international relations.

A guide to Peruvian law published in 1947 by the Law Library of the Library of Congress provides historical backgrounds in both codified and statutory fields of law, together with descriptions of statutory texts and monographs.¹⁷ Extensive bibliographical data may be found in copious footnotes. This is one of a series of 10 such guides to Latin American law written by Mrs. Clagett, former chief of the Hispanic Law Division, Law Library of Congress. In acknowledgement of the importance of such a work to the study of Peruvian institutions, she

¹³ Tauro, Alberto. *ed. Anuario Bibliográfico peruano de 1943*. Lima [Tall. Gráf. de la Edit. Lumen, S.A.] 1945-1966(?) (Ediciones de la Biblioteca Nacional)

¹⁴ *Boletín Bibliográfico* (Library of the Chamber of Deputies of Peru) Lima, año 1, no. 1, Nov. 1943-?

¹⁵ *Catálogo de la Biblioteca del Club Nacional*. Lima, 1942.

¹⁶ *Handbook of Latin American Studies*. Gainesville, University of Florida Press, 1935-.

¹⁷ Clagett, Helen (Lord). *A Guide to the Law and Legal Literature of Peru*. Washington, Library of Congress, 1947. 188 p. (Latin American Series, no. 20)

was honored with a foreign decoration, the Order of the Sun, by the Peruvian government. The present guide updates this 1947 work through 1972.

The 1957 S. A. Bayitch, professor of law at the University of Miami School of Law, published a bibliography on Latin American legal studies in English.¹⁸ The work is an exhaustive two-part guide. In one, the items are arranged by subject matter, and in the other they are classified by country.

A year later, the library of the Chamber of Deputies commenced a bibliographical and legislative guide series on specific topics of law. Two works resulting from this project have been located. One relates to municipalities¹⁹ and the other to transportation.²⁰ An examination of the latter material shows that it contains complete citations to periodical literature as well as the texts of both Peruvian and foreign laws on the subject. Presumably, however, pending the reconvening of the Peruvian legislature, publication of these special guides and the quarterly series described earlier must have been temporarily shelved.

General bibliographies in looseleaf form are issued periodically by the Association of American Law Schools. One such publication which appeared in 1968 as no. 42 relates exclusively to Latin American law²¹ and devotes a section specifically to Peruvian law and its sources.

Shortly before this guide went to press, the Law Library of the Library of Congress received a copy of a 1971 bibliography by Ella Dunbar Temple, a San Marcos University professor of Peruvian institutional history and president of the Peruvian Historical Society. This uncataloged material contains 401 items relating to the republican period.²² It is interesting to note that the work carries citations to legal bibliographies which are part of the San Marcos University bulletin (*supra*). Designed as a bibliographical introduction to the legal history of Peru, it incorporates not only general and legal history sources but also serial publications, law reviews, monographs, and treatises covering the whole spectrum of Peruvian law.

From January 1972 to December 1974, the Organization of American States

¹⁸ Bayitch, S. A. *Guide to inter-American legal studies; a selective bibliography of works in English*. Coral Gables, Univ. of Miami Law Library, 1957. 297 p.

¹⁹ *Municipalidades; bibliografía y guía legislativa* (Cámara de Diputados. Biblioteca) Lima, 1958. 125 l.

²⁰ *Tránsito; bibliografía y guía legislativa* (Cámara de Diputados. Biblioteca) Lima, 1962. 245 p.

²¹ Association of American Law Schools. *Law books recommended for libraries*. South Hackensack, N.J., F. B. Rothman, 1967- (looseleaf)

²² Temple, Ella Dunbar. *Introducción bibliográfica a la historia del derecho y la etnología jurídica. Perú: etapa republicana*. Bruxelles, Université Libre de Bruxelles, 1971. n.p. (Etudes d'histoire e d'ethnologie juridiques)

published the *Current Bibliographical Information* bulletin.²³ A general bibliography of current Latin American sources, it had a section devoted to legislation in which Latin American countries were arranged alphabetically. Current legislation, its descriptive title, and its source were cited following each country entry.

Under a Ford Foundation grant, Rosa Quintero Mesa, Latin American documents librarian at the University of Florida, has been working on a series of volumes entitled *Latin American Serial Documents*. Information received to date by the Library of Congress indicates that the volume for Peru is near completion at this writing. The volume should prove very useful since it purports to provide detailed data on author and title, beginning date of material, frequency, contents, gaps, changes in format, other informative notes, and major holdings in the United States and Canada.

²³ *Current Bibliographical Information*. Washington, Organization of American States, January 1972-December 1974.

Index of Persons

- Abarca Fernández, Ramón R., 103 n.9
 Abarracín, Augusto S., 269
 Acevedo y Criado, Ismael, 106 n.11
 Acuña Chopitea, Alfaro, 106 n.11
 Aguilar, Mariano, 17
 Aguirre Morales, Osvaldo, 122
 Aita Valle, Rafael, 103 n.9
 Alayza Grundy, Ernesto, 71
 Alayza y Paz Soldán, Luis, 20, 122, 159 n. 51
 Alayza y Paz Soldán, Toribio, 10, 18, 32, 47, 115
 Albertini, Luis E., 15
 Alcalde Mongrut, Ricardo, 135 n.34
 Alcázar y Castro, Víctor Silvio del, 117 n.32
 Aldunate, Luis, 220
 Alejos, Melchor, 103 n.9
 Alemán Cornejo, Fr. José María, 103 n.9
 Alfaro Calle, Víctor M., 117 n.32
 Alfonso XIII, King of Spain, 233
 Almagro, Diego de, 1
 Altmann Smythe, Julio, 157 n.32, 160 n.51, 277
 Altmeyer, Arthur J., 48 n.11
 Alva, Felipe, 117 n.32
 Alva, Julio César, 81, 182 n.47
 Alvarado, Felipe Antonio, 3
 Alvarado Garrido, Luis, 244
 Alvarado Sánchez, Jerónimo, 108 n.12
 Alvarado Sánchez, José, 96
 Alvarez, Alejandro, 219, 227
 Alvarez, Gervasio, 150
 Álvarez Beltrán, Carlos, 42
 Álvarez Benavides, Artemio, 100 n.5
 Álvarez Calderón, Alfonso J., 106 n.11
 Alzamora, Francisco de P., 117 n.32
 Alzamora, Isaac, 78
 Alzamora, Isaac, Jr., 183 n.47
 Alzamora, Lizardo, 246 n.15, 249, 249 n.7
 Alzamora, Román, 245 n.15, 249, 252
 Alzamora, Wenceslao, 182 n.47
 Alzamora Silva, Lizardo, 19, 47, 105 n.11, 107, 129, 249
 Alzamora Valdéz, Javier, 100 n.5
 Alzamora Valdéz, Mario, 44, 118, 175 n.16, 258
 Amat, Alberto Eduardo de, 71
 Amézaga Carranza, Daniel, 56
 Anchorena, Carlos A., 115
 Anderson, Luis, 227
 Angulo Argomedo, Jorge M., 195, 257
 Angulo Puente Arnao, Juan, 62, 64, 81, 191, 210, 215 n.20, 262
 Anticona Moreno, Juan P., 56
 Aparicio y Alvarado, Germán, 252
 Aparicio y Gómez Sánchez, Germán, 94, 99, 111, 115, 138, 180, 192, 258, 271, 280
 Aparicio y Gómez Sánchez, Víctor, 169 n.34
 Apaza Rodríguez, Miguel, 22 n.1

- Aragón, Luis Angel, 106 n.11, 265
 Aramburú, Andrés A., 159 n.51
 Aramburú, José Félix, 23, 245
 Aramburú, Narcisco de, 269
 Arana Cuadra, Carlos, 169 n.34
 Arancibia y Lastres, Jorge, 117 n.32
 Aranda, Ricardo, 77, 237, 260, 262
 Aranibar Montes, José, 117 n.32
 Araujo, Eliseo, 16, 182 n.47
 Araujo, Ernesto, 246 n.15
 Araujo Álvarez, Ernesto, 111
 Arca Parró, Alberto, 23, 101 n.8
 Arce Helberg, Victor R., 106 n.11
 Arce Mas, Jorge, 139
 Arce Miranda, Teodosio, 74 n.6
 Arellano, Manuel J., 108 n.12
 Arenas, Alejandro, 78
 Arenas, Antonio, 7, 242
 Arenas, Germán, 116
 Arenas y Loayza, Carlos, 208 n.36, 268
 Arévalo Alvarado Zañartú, Alfonso, 145
 Arévalo y Carreño, Carlos, 207
 Arias, Antenor, 137, 208 n.36
 Arias, José Viterbo, 153, 166
 Arias Schreiber, Diómedes, 10, 115, 125
 n.13, 128 n.4, 164, 245 n.15
 Arias Schreiber, Ernesto, 125 n.13, 128 n.4
 Arias Schreiber, Javier, 105 n.11
 Armas Méndez, Gustavo, 102 n.9
 Armas Méndez, Vicente, 70 n.4
 Armentúa, Nicolás, 213
 Arosemena Garland, Geraldo, 256
 Arrieta S., Raúl A., 101 n.8
 Arroyo, Julián A., 103 n.9
 Arroyo Delgado, Enrique, 236
 Arteta, Vicente, 183 n.47
 Ascarrunz, Moisés, 215 n.20
 Aspíllaga Delgado, Adalberto, 108 n.12
 Avelino Cáceres, Andrés, 9
 Avellaneda, Marco M., 214 n.20
 Avendaño, Leonidas, 100 n.6, 154
 Ayarza, Víctor E., 250
 Ayasta González, Julio, 277
 Azcárate, G. de, 233

 Bacacorzo, Gustavo, 37
 Balderrama Tudela, Oscar, 54, 263
 Ballesteros, Tomás de, 77
 Balliván, Adolfo, 214 n.20
 Balta, José, 8

 Bambarén, Carlos A., 100 n.6, 102 n.9, 156
 Bandelier, Fanny R., 215 n.20
 Barandiarán, Carlos, 104 n.10
 Barcellos, Luis J., 108 n.12
 Barco Peña, José, 256 n.34
 Barletti Valencia, Juan, 158
 Barra, Francisco L. de la, 227
 Barreda, J. Alberto, 70
 Barreda Bedoya, Augusto, 65
 Barreda y Laos, Carlos, 183 n.47
 Barreda y Laos, Felipe, 82 n.19
 Barrenechea Calderón, Julio César, 197
 Barrenechea y Raygada, Oscar, 62
 Barreto, Anselmo, 110, 246 n.15
 Barreto Gutiérrez, Ernesto, 117 n.32
 Barrientos Casós, Luis Felipe, 197
 Barrio, César, 39 n.2
 Barrios Orbegoso, Raúl, 59
 Barrós, Oscar C., 180, 270
 Barros Borgoño, Luis, 220
 Bartlett, Lynn M., 186 n.10
 Basadre, Federico, 222
 Basadre, Jorge, 15, 250
 Basadre, José, 90
 Basadre, Modesto, 230
 Basombrío y Echenique, C., 246 n.15
 Basurto Valdivia, Carlos F., 117 n.32
 Bayitch, S.A., 283
 Becerra, Celso, 197
 Bedoya, Jacinto, 252
 Belaúnde, Alvaro, 59
 Belaúnde, Ricardo, 261
 Belaúnde, Víctor Andrés, 10, 20, 208, 221,
 224, 252
 Belaúnde Guinassi, César, 145, 184 n.1
 Belaúnde Guinassi, Manuel, 39 n.2, 59, 251
 Belaúnde Terry, Fernando, 11, 47, 71, 128
 Belaúnde y Diez Canseco, Rafael, 101 n.8,
 208
 Beltrán, Pedro G., 71
 Benavides, Oscar R., 10, 90, 224
 Benavides Balbín, Alberto, 281
 Benavides Canseco, Alberto, 159 n.51, 164
 Benavides Loredó, Alfonso, 17, 249
 Benavides y Diez Canseco, Alfredo, 238
 Bendejú, Miguel A., 160 n.51
 Benigno Valdivia, Manuel, 185
 Benites Sánchez, Santiago, 158
 Benvenuto, Neptalí, 250
 Beraún F., Erasmo, 117 n.32

- Bermúdez, Pedro Pablo, 5
 Bernuy Gómez, Oscar, 117 n.32
 Bewes, Wyndham Anstis, 123 n.3
 Billingham, Guillermo Enrique, 9
 Blanchot Holley, Anselmo, 220
 Boesen, Richard M., 107, 108 n.12, 126
 Boggio Amat y León, René, 70, 107, 108 n.12
 Bolívar, Simón, 2-4, 13, 17, 20, 32, 84, 149, 172, 177
 Bolognesi Effio, Alberto, 194
 Bonhomme Seymour Waden, Carlos de, 197
 Bonilla, F., 99, 159, 164 n.10, 201
 Bonilla, José A., 266
 Bonilla Armado, José, 255
 Borchard, Edwin M., 246
 Borda Ferreiros, Carlos, 135 n.34
 Borel, Eugene, 227
 Borgoño, Justiniano, 9
 Borja, Luis Felipe, 234
 Borja García y Urrutia, Humberto, 271
 Boza, Edilberto C., 94
 Boza Barducci, Carlos, 128 n.4
 Bramont Arias, Luis, 157
 Bravo Cevallos, Juan, 117 n.32
 Bravo Fonseca, Alberto, 104 n.10
 Breña Pacheco, Leonor, 41
 Briceño S., S., 201 n.24
 Briebe, Enrique, 222
 Brown, James R., 140
 Buenos y de la Fuente, Bruno, 169 n.34
 Bulnes Samamé, Ismael, 44
 Burga Cisneros, Eloy, 183 n.47
 Burga Cisneros, Ezequiel, 182 n.47
 Burga Larrea, Carlos, 102 n.9
 Bustamante Cisneros, Ricardo, 21, 195
 Bustamante de la Fuente, Manuel J., 37, 185
 Bustamante i Rivero, José Luis, 11, 200, 245
 Bustamante Ugarte, Rubén A., 164, 178
 Bustamante y Santisteban, Pedro, 182 n.47
 Bustamante y Sirvén, Antonio Sánchez de, 145 n.5, 207, 243, 245
 Buttá, Manuel, 65
 Caballero A., Juan Evangelista, 102 n.9
 Caballero y Caballero, J. F., 275
 Caballero Zanelli, José, 108 n.12
 Cabello, Gerardo, 182 n.47
 Cáceres, Andrés, 46
 Cáceres, J. Antonio, 93
 Cáceres, José Domingo, 135 n.34
 Cáceres, Nelson, 41
 Cáceres Olazo, Adrián Miguel, 253
 Cajica, José M., 98
 Calderón, Pedro José, 7
 Calderón Cousiño, Adolfo, 220
 Calderón Rubio, S.A., 82 n.19
 Calle, José Manuel, 128 n.4
 Calle, Juan José, 43, 89, 94, 114, 153, 166, 177, 269
 Calle Luna, Manuel, 160 n.51
 Canalejas y Méndez, J., 232
 Canales, Carlos Felipe, 104 n.10
 Candamo, Manuel, 9
 Capuñay C., Manuel A., 56
 Capuñay Mimbela, Carlos, 58
 Cárdenas y Olazábal, Abel, 117 n.32
 Carneiro, Daniel A., 117 n.32
 Caro, César A., 125 n.13
 Caro Santibáñez, Manuel, 103 n.9
 Carpio, Alfredo, 103 n.9
 Carranza, Manuel Augusto, 138 n.12
 Carrasco, Roberto, 160 n.51
 Carrión Cachot, Pedro J., 108 n.12
 Casas, Gaspar de las, 226
 Casas, Luis F. de las, 194
 Caso, Pedro, 125 n.13
 Castañeda, Jorge Eugenio, 73, 97, 126, 133 n.10, 134
 Castañeda Ramírez, Luis, 57
 Castañeda Rangel, Alfonso, 194
 Castañón Pasquel, Emilio, 108 n.12
 Castilla, Luciano, 160 n.51
 Castilla, Ramón, 7, 45, 50, 88, 174, 215
 Castillo, Melquíades, 197
 Castillo Delgado, Luis M., 42
 Castillo Vargas, Juan Lino, 49, 54
 Castillo y Bahena, Rafael V. del, 209 n.41
 Castro, César, 101 n.7
 Castro Agusti, Fernando Luis, 164, 178
 Castro Castañeda, Alvaro, 79
 Castro Harrison, Jorge, 238
 Castro Oyanguren, Enrique, 235 n.42
 Catacora Pino, J. Alberto, 106 n.11
 Cateriano, José Andrés, 166
 Cavego Mariategui, Amalia, 281
 Caverro, José Salvador, 222, 270
 Cebrián, Oscar, 269
 Chacaltana, Cesáreo, 93, 252
 Chacón, Luis Antonio, 232

- Charles I, King of Spain, 170
 Charles III, King of Spain, 77
 Chavarri B., Daniel, 79
 Chávez Fernández, Manuel M., 192
 Chávez León, Fernando Luis, 39 n.2, 193
 Chávez Michieli, Manuel A., 75
 Checa Drouet, Benigno, 207, 210
 Chica C., Magdaleno, 39
 Chiriboga V., José Ricardo, 235
 Chirinos Pacheco, Benjamin, 44
 Choquehuanca, José Domingo, 256, 257 n.5
 Chueca Silva, Luciano Gerardo, 117 n.32
 Cisneros, Emilio L., 103 n.9
 Cisneros, Manuel, 130
 Cisneros, Máximo, 106 n.11, 269
 Cisneros Durandean, Manuel, 183 n.47
 Cisneros Sánchez, Manuel, 70
 Clagett, Helen (Lord), 282
 Collazos Osore, Artemio, 183 n.47
 Concha, Carlos, 18, 159 n.51
 Conde y Luque, Rafael, 233
 Coolidge, Calvin, 218, 222
 Cooper, H.H.A., 159, 170
 Coral, Luciano, 231
 Córdoba, Diego Luis, 227
 Córdova, Luis F., 102 n.9
 Córdova Régulo, Angeles, 63
 Cornejo, Angel Gustavo, 94, 114, 152, 154, 163, 167
 Cornejo, Lino, 107 n.12, 111, 122, 124, 125 n.9, 129, 137, 154, 164
 Cornejo, Mariano H., 17, 163, 166, 233
 Cornejo Chávez, Héctor, 102, 103 n.9, 104 n.10
 Cornejo M., Pedro, 232
 Cornejo Matos, Víctor, 160 n.51
 Cornejo Soto, Guillermo, 57
 Coronado H., Ciro A., 104 n.10
 Corpancho, Manuel Nicolás, 230
 Cortés, Leopoldo, 93, 249 n.6
 Corvetto Vargas, Aníbal, 96
 Cosio, Félix, 181
 Costa y Cavero, Ramón, 32, 74, 192
 Crawford, Henry P., 135
 Cuadros, Carlos Ferdinand, 70 n.4
 Cuadros E., Raúl, 101 n.7, 188 n.16
 Cuadros Villena, Carlos Ferdinand, 278
 Cuba Caparó, José Lucas, 70 n.4
 Cuba Torres, Sergio, 156
 Cubas Vinatea, Rafael, 37 n.39
 Cuentas Ormachea, Enrique A., 181
 Cunha, Euclydes da, 214
 Dammert Elguera, Enrique, 281
 Dapelo, Pedro José, 106 n.11
 Dato, Eduardo, 233
 Dávalos y Lissón, Pedro, 32
 Dávila Guevara, Humberto, 129 n.4
 Delgado, Juan José, 102 n.9
 Delgado, Julio, 160 n.51
 Delgado, Luis Humberto, 236
 Delgado, Pedro, 234
 Delgado, Pedro Génaro, 101, 102 n.9, 118, 125 n.13, 179, 181
 Delgado A., M. Julio, 18, 39 n.2, 53, 245, 246 n.15, 263
 Delgado Bedoya, Manuel, 187 n.16
 Delgado Irigoyen, Javier, 246 n.15
 Delgado y Morey, Manuel, 208 n.36
 Dennis, William Jefferson, 222
 Destruge, Camilo, 231
 Deústua, Alejandro A., 125 n.13
 Deústua, Ricardo Alejandro, 85
 Deza, Eugenia A. de, 270
 Díaz Barrios, Jorge, 188 n.16
 Diez Canseco, Jaime, 126 n.13
 Diez Canseco Bernales, Octavio, 71
 Diez Canseco R., Manuel, 185 n.8
 Diez de Medina, Eduardo, 214 n.20
 Domke, Martin, 146 n.1, 148 n.3
 Dongo Denegri, Luis Alberto, 37, 44
 Durán Bernales, Alberto, 139
 Echecopar, Enrique, 179
 Echecopar García, Luis, 103 n.9, 104, 105 n.10, 117 n.32, 194
 Echegaray, Mariano N., 191
 Echenique, José Rufino, 7, 110, 121, 174
 Edwards, Agustín, 218
 Edwards, Rafael, 222
 Efremoff, Jean, 205
 Egaña, Rafael, 220
 Egas M., José María, 235
 Eguiguren, Francisco José, 110, 114, 159 n.51, 177, 271
 Eguiguren, Luis Antonio, 87, 90, 91 n.18, 100 n.5, 236, 255
 Eguren, Jorge L., 116 n.32
 Elejalde Vargas, Eduardo, 108 n.12
 Elías, Víctor R., 101 n.7

- Elías y Aparicio, Ricardo, 156, 195
 Elnore, Alberto Augusto, 78, 123, 128, 204, 243
 Escallón, Ignacio, 227
 Escalona Centeneo, Oscar, 277
 Escobar, Julio, 39 n.2
 Escriche y Martín, Joaquín, 265
 Espino Pérez, Julio D., 158
 Espinosa Daroch, Ana, 103 n.9
 Espinoza Cordero, Andrés, 181
 Espinoza Mandujano, Honorio, 117 n.32
 Espinoza Miranda, Adeodato, 74 n.6
 Estrada, Alcides F., 181
 Estrada Cruz, Arnaldo, 103 n.9
 Evans, E. Clinton, 81, 187 n.16

 Fajardo, Constantino, 114
 Fajardo, Jesús Víctor, 21, 35, 41, 56, 75, 83, 99, 103 n.9, 106 n.11, 118, 127, 134 n.23, 142 n.13, 158, 164 n.10, 182, 188 n.16, 201
 Fariña y Casanueva, Salvador, 138 n.12
 Feijó Reyna, Ricardo, 18
 Fernández, Constantino, 231 n.9
 Fernández, Francisco Mariano, 89, 110
 Fernández Álvarez, E., 39 n.2
 Fernández Dávila, Guillermo, 154
 Fernández García, Raúl, 200
 Fernández Prida, Joaquín, 232 n.23
 Fernández Stoll, Jorge, 106 n.11
 Fernandini, César, 282
 Ferrades, Julio M., 117 n.32
 Ferrandiz M., Alberto, 101 n.8
 Ferrero, Rómulo A., 48, 58, 71
 Ferrero Rebagliati, Raúl, 196
 Ferri, Enrico, 168
 Filomeno, Abel M., 102 n.9
 Fiore, Pasquale, 215 n.20
 Flor Cúneo, Miguel de la, 188 n.16
 Flores, Pastoriza, 234
 Flores Bao, Francisco, 37
 Flores y Caamaño, Alfredo, 233 n.31
 Flórez, José Toribio, 136
 Forero, Emilio, 78, 163
 Fort, Michel, 79
 Fredes Aliaga, Manuel, 82 n.18
 Freundt Rosell, Alberto, 169 n.34
 Freundt v Rosell, Alejandro, 177
 Freyre, Herbert, 201
 Freyre y Santander, Manuel de, 218

 Frisancho, José, 122
 Fuente, Jorge de la, 117 n.32
 Fuente, Ramón de la, 80
 Fuente Chávez, Germán de la, 134
 Fuentes, Hildebrando, 61
 Fuentes, Manuel Atanasio, 15, 31, 110, 113, 153, 176, 203, 244, 248, 265
 Fuentes, Manuel Aurelio, 159 n.51, 169 n.34
 Fuentes Castro, Paulino, 80, 261, 269
 Fuentes Irurozqui, Manuel, 49

 Gadea, Luis E., 262
 Gaffron, Hermann, 78
 Gallagher, E. Clinton Evans, 140
 Gallagher, Manuel C., 111
 Galván, Guillermo, 62
 Gálvez, Aníbal, 167, 249
 Gálvez, José, 150, 178
 Gálvez Ayarza, José, 103 n.9
 Gamarra, Agustín, 5, 73, 174
 Gamarra, Manuel Jesús, 32
 Gamarra Pereda, Manuel J., 107, 108 n.12
 Garaycochea, León, 66, 137
 García, Jacinto Sixto, 17
 García, José Antonio, 121
 García Arrese, Marco A., 164
 García Calderón, Eduardo, 52, 179, 192, 262
 García Calderón, Francisco, 8, 169, 219, 264
 García Calderón K., Manuel, 100 n.4, 127, 246 n.15, 247
 García del Río, Juan, 2
 García Frías, Luis, 108 n.12
 García Gastañeta, Carlos, 10, 122, 244, 246 n.15
 García González, Alfredo S., 55, 63
 García i García, José Antonio, 269
 García Maldonado, Jesús, 122
 García Montúfar, Guillermo, 83, 209
 García Rada, Domingo, 169, 180, 257
 García Ramos, Dagoberto, 281
 García Salazar, Arturo, 222
 García Salazar, José A., 103 n.9
 García Sayán, Enrique, 107 n.12
 García y Aler, Constantino, 126 n.13
 Garland, Alejandro, 78
 Garmendia, Roberto, 278
 Garrido Lecca y M., Teodoro, 104 n.10
 Garrido Mendivil, J. M., 178

- Gastelú P., Fabio, 169 n.34
 Gastón, Alfredo, 268
 Gazzani, J. Fernando, 261
 Gibson, Carlos D., 100 n.1
 Gil, Benito, 110
 Gildemaister, Federico, 78
 Gildemeister M., Alfredo, 67
 Giraldo, Santiago, 182 n.47
 Glave Valdivia, Eduardo, 106 n.11
 Goitizolo, Miguel, 106 n.11
 Goitizolo, Pedro C., 16, 81, 93, 113, 261
 Goitizolo Bolognesi, Enrique, 102 n.9
 Goldman, Marvin G., 148 n.7
 Gómez, Abraham, 96
 Gómez Sánchez, José, 88
 González, Ricardo, 106 n.11
 González Dittoni, Enrique, 238, 239 n.14
 González M., José Domingo, 70 n.4
 González Olaechea, Manuel, 246 n.15
 González Pacheco, César Augusto, 246 n.15
 González Rosales, Guillermo, 189 n.16, 195, 197
 González Suárez, José Luis, 101 n.7
 Grasserie, Raoul de la, 93
 Grimaldos y Soto, Germán, 182 n.47
 Grisolle y Tirado, M.A., 100 n.1
 Guamán Poma de Ayala, Felipe, 251
 Guardia Mayorga, César Augusto, 187 n.16
 Guerra, Felipe S., 180
 Guerra, Manuel Lorenzo, 222
 Guerrero Paredes, Augusto, 129 n.4
 Guevarra Avilés, Alberto, 246 n.15
 Guillén Laos, Víctor A., 138 n.12
 Gutiérrez, Edmundo, 221
 Gutiérrez, Gabriel, 113
 Gutiérrez de Escobar, Francisco, 112
 Gutiérrez Paredes, Ramón, 177
 Guzmán, Antonio Leocadio, 14
 Guzmán Ferrer, Fernando, 97, 102 n.9, 118, 168, 179

 Habich, Eduardo, 78
 Hague, Juan Luis, 155
 Harding, Warren, 218, 221
 Haya de la Torre, Edmundo J., 191 n.6
 Haya de la Torre, Víctor Raúl, 9, 209
 Heraud Cricet, Luis F., 106 n.11
 Heredia, Ricardo, 252
 Hernández, Félix R., 70 n.4
 Hernández Mendoza, Enrique, 103 n.9

 Heros, Luis de los, 71
 Herrera, Jenaro Ernesto, 17
 Hinojosa Morales, Nilo, 246 n.15
 Holgado Valer, Enrique, 104, 105 n.10
 Hoover, Herbert, 218
 Hughes, Charles Evans, 218, 223
 Huguet, Andrés A., 101 n.7
 Hurtado M., Julio, 103 n.9
 Hurtado Pozo, José, 160 n.51

 Ibáñez Velarde, José, 134
 Ibérico R., David, 56
 Ibérico Rodríguez, Mariano, 255
 Iglesias, Miguel, 9
 Imaña, Miguel Damián, 78
 Ireland, Gordon, 211
 Iriarte Valcárcel, Eduardo, 64
 Iturralde, Abel, 212 n.6
 Izaguirre, Carlos Alberto, 106 n.11
 Izcuí, José A. de, 225

 Jara, Carlos A. de la, 66
 Jara y Ureta, Ernesto de la, 122
 Jáuregui, José María, 7
 Jáuregui, Teodoro, 102 n.9
 Jave Rodríguez, Miguel, 126 n.13
 Jiménez, José J., 102 n.9
 Jiménez, Plácido, 100 n.6, 110, 152, 163, 208 n.36
 Jiménez Borja, José, 246 n.15
 Jiménez de Asúa, Luis, 154, 157
 Jiménez del Rey, Eduardo, 125 n.13
 Joannini, Frank L., 89

 Kelsen, Hans, 255
 Kemmerer, Edwin Walter, 46, 51, 59, 131
 Kimber, A. W., 133 n.11

 Labia, Rafael M. de, 233
 La Hoz, Ricardo, 108 n.12
 Lahura, Mariano, 156, 160 n.51
 Lama, Miguel Antonio de la, 16, 21 n.60, 81, 92, 113, 123, 127, 153, 166, 177, 252, 261, 265
 La Mar, José de, 3, 5
 Lamas, Tomás, 150
 Lanatta, Rómulo E., 36, 104, 105 n.10
 Laos, Ricardo, 140 n.2
 Larrabure y Correa, Carlos, 225

- Lassiter, William, 218
 Lavalle, Hernando de, 86 n.3, 126, 191, 253
 Lavalle, José Antonio de, 14, 159 n.51
 Lavalle, Juan Bautista de, 122, 179, 204, 250, 253
 Lavalle Vargas, Hernando de, 129
 Lazo Amorós, José, 35
 Lazo Torres, Héctor, 117 n.32
 Ledgard J., Carlos A., 108 n.12
 Leguía, Augusto, 160 n.51
 Leguía, Augusto Bernardino, 9, 17, 89, 111, 122, 192, 205
 Leguía, Jorge Guillermo, 265
 Leguía, José Guillermo, 281
 Leguía Iturregui, Oscar, 82
 Leguía y Martínez, Germán, 155, 265
 León, Carlos Aurelio, 17, 271
 León, José Demetrio, 53, 245
 León, José Matías, 179
 León Barandiarán, José, 10, 95, 255
 León Corcuera, Marino, 117 n.32
 León de Izaguirre, Virginia, 188 n.16
 León Montalbán, Andrés, 125
 León y León, Bernardino, 107 n.12, 156, 159 n.51, 194
 León y León Federico, 31
 Lercari L., Atilio Botto, 130
 Liendo, Hilario, 114
 Linares P., Augusto, 102 n.9
 Llerena Morán, José, 82 n.19
 Llontop Amorós, Carlos, 129, 188 n.16
 Loayza, Florencia, 39 n.2
 Loayza, José Jorge, 89, 110
 Logan, Cornelius A., 219
 López, Jacinto, 226
 López, Juan C., 246 n.15
 López, Nicolás F., 226, 234
 López de Romaña, Eduardo, 9
 López Tizón, Manuel, 88
 Lora, Juan de Dios, 43, 117 n.32
 Lozada Benavente, Elías, 103 n.9
 Lozano Torrijos, Fabio, 223, 226, 235
 Luna, José Ricardo, 200
 Luna, Juan, 89, 110
 Luna, Manuel Teófilo, 182 n.47
 Luna, Segundo, 182 n.47
 Luna Cartland, Guillermo, 69 n.4
 Luna Victoria, Ricardo, 183 n.47
 Macedo, Eleodoro, 117 n.32
 Macera, César Francisco, 24
 MacLean y Estenós, Percy, 110, 156, 168, 277
 MacLean y Estenós, Roberto, 117 n.32, 236, 247
 McQueen, Charles A., 47
 Magnuson, Warren G., 67
 Maguiña Pajuelo, Edgardo, 56
 Maisch von Humboldt, Lucrecia, 130
 Malpartida, Elías, 78
 Mantilla, Oscar G., 18
 Manzanilla, José Matías, 23, 110, 184, 190, 192
 Mar, Juan Manuel del, 35, 186 n.12
 Maradiegue, Julián V., 182 n.47
 Marchand Stens, Luis, 209
 Marchant, Alexander Nelson De Armand, 211
 Mariátegui, Francisco Javier, 88
 Mariátegui Malarín, Juan, 142
 Mariátegui-Sáenz, Augusto, 101 n.8
 Márquez, Luis G., 106 n.11
 Martínez, Santiago, 178
 Martínez de Pinillos, Pedro, 166
 Martínez G., H., 186 n.13
 Martínez G., Silviano, 35, 44, 181, 186 n.13, 188 n.16
 Martínez Hague, Carlos, 103 n.9
 Masías, Felipe, 14
 Maura y Montaner, Antonio D., 232
 Maúrtua, Aníbal M., 216 n.6, 234, 246 n.15
 Maúrtua, Vicente, 147 n.4
 Maúrtua, Víctor M., 110, 151, 154, 163, 205, 213, 219, 224
 Mayorga Villena, Martín Salvador, 255 n.34
 Medina, Pío Máximo, 222
 Medina Pinón, Hernán, 70 n.4
 Medrano Cornejo, Humberto, 59
 Medrano Pacheco, Armando, 104 n.10
 Meiggs, Henry, 64
 Melgar, Fernando, 67
 Mendoza, José, 169 n.34
 Menéndez, Andrés, 78
 Merino Reyna, José, 98, 118, 127, 129 n.4
 Mesa, Rosa Quintero, 284
 Métraux, Alfred, 71 n.10
 Miller, J. L., 138 n.12
 Miranda Pelayo, L., 82 n.19
 Miró Quesada, Luis, 190, 197
 Miró Quesada Laos, Enrique, 126 n.13
 Mitre, Bartolomé, 220

- Mogrovejo Rospigliosi, Andrés, 167
 Molina Agüero, Humberto, 102 n.9
 Molina Bueno, Agustín, 137
 Molina Flores, Emilio, 39 n.2
 Moll, Bruno, 49
 Moncayo, Pedro, 231
 Monge, Juvenal, 48
 Monteagudo, Bernardo, 2
 Montenegro, Alfredo, 182 n.47
 Montenegro Baca, José, 99, 106 n.11, 158, 263, 272, 279
 Montenegro Chávez, R. A., 106 n.11
 Montero, Estebán, 78
 Montero, Lizardo, 9
 Montero Ríos, Eugenio, 233
 Montori, V. M., 105 n.11
 Montoya, Ezequial, 208 n.36
 Montoya Alberti, Ulises, 50
 Montoya Manfredi, José Ulises, 183 n.47
 Montoya Manfredi, Ulises, 127, 130, 146 n.2
 Moore, John Bassett, 216
 Moore, Roger D., 124, 140 n.3
 Morales, Alejandro, 154
 Morales, Francisco, 78
 Morales Bermúdez, Remigio, 9, 43
 Morales Gálvez, Elías, 183 n.47
 Morales y Duárez, Vicente, 20
 Morán Alva, Manuel, 197
 Moreno, Federico, 78
 Moreno, José Elio, 182 n.47
 Moreno, José M., 112
 Moreno y Maíz, Manuel, 78
 Morey, Robert Havens, 21
 Moreyra Paz-Soldán, Manuel, 120 n.3
 Moreyra y Paz Soldán, Carlos, 71
 Morón Espinoza, César, 158
 Morote, Manuel V., 244
 Mosquero Serrano, Víctor, 108 n.12
 Moyano Wuich, Oscar, 104 n.10
 Mújica Ortiz, David, 271
 Muñoz, Luis, 21
 Muñoz Reyes, Víctor, 214
 Muñoz Vernaza, A., 226
 Navarra y Rocafull, Melchor, 77
 Navarro Irvine, Félix, 134, 257
 Neves Valdez, Roberto, 100 n.3
 Nichtawitz, Teodoro, 59
 Nicolini, Juan Vicente, 74 n.6
 Nieto, Juan Crisóstomo, 260, 266
 Nieves Ayala, Arturo, 63, 143, 167
 Nixon, Patricia, 279
 Norabuena, César, 103 n.9
 Noriega, Raúl, 79
 Noriega del Valle N., Enrique, 57
 Normand, E., 86
 Novoa, Ignacio, 150
 Novoa Rodríguez, Mauro, 168
 Nugent, Ricardo, 201
 Núñez, Estuardo, 95, 250
 Núñez Borja, Humberto, 35, 187 n.16
 Núñez Mendizábal, Tomás, 255 n.34
 Núñez Valdivia, Jorge E., 256 n.34
 Núñez Valdivia, M. Segundo, 254
 O., J. E. de, 92
 Odría, Manuel A., 11, 264
 Olachea, Guillermo U., 17, 262
 Olachea, Manuel Augusto, 89
 Olachea, Pedro Carlos, 110, 125 n.13
 Olachea, Teodórico, 80
 Olachea Du Bois, Manuel Pablo, 108 n.12
 Olarte Camacho, Vicente, 225
 Olazábal Feijoo, Leoncio, 98
 Olivart, Ramón de Dalmán y de Olivart, Marqués de, 232
 Oliveira, Pedro, 89
 Oliver y Esteller, Bienvenido, 232
 Olivo, Juan Francisco, 2 n.1, 6 n.13, 7 n.17, 8 n.22, 171 n.3, 266
 Orbegozo, Luis José de, 5, 88
 Ordóñez, Oscar H., 236
 Orellana Agüero, Manuel, 20
 Ortega Benítez, Francisco V., 200
 Ortega Zegarra, Joaquín, 48
 Ortíz de Zavallos Paz-Soldán, Carlos, 173 n.7
 Ortíz de Zavallos y Vidaurre, Ricardo, 93
 Osma, Felipe de, 233
 Osma y Pardo, Felipe de, 121
 Osorez, José Manuel, 78, 249
 Oviedo, Juan, 113, 237, 260
 Oyague y Calderón, Carlos, 65
 Oyague y Noel, Lucas R., 62
 Pachas Torres, Guillermo, 118
 Pacheco, Carlos, 150
 Pacheco, Toribio, 14, 92, 254, 270
 Pacheco Medina, Miguel, 106 n.11, 117, 271
 Padilla Bendejú, Abraham, 63
 Palacio Pimentel, H. Gustavo, 99
 Palacios, Fernando E., 111, 164
 Palacios, José Miguel, 188 n.16

- Palma, Ricardo, 10
 Palmer, Thomas W., 85
 Palomino Arana, Helí, 21, 159, 164 n.10, 271
 Pando, José María, 203
 Pardo, Manuel, 8
 Pardo Márquez, Bernardo, 106 n.11, 108 n.12
 Pardo y Aliaga, Felipe, 7, 14
 Pardo y Barreda, José, 9, 17, 233, 261, 269
 Paredes, Rómulo, 117 n.32
 Paredes, Simón Gregorio, 89, 110, 176
 Pareja Paz-Soldán, José, 19, 281
 Parodi Remón, Carlos, 264
 Pasquier, Claude du, 254
 Pastor, José Cecilio, 182 n.47
 Patrón, Enrique, 73
 Patrón Faura, Pedro, 34, 101 n.7, 8, 102
 Patrón Irigoyen, Jorge, 256 n.34
 Payán, José, 121
 Paz Soldán, Carlos, 225, 233
 Paz Soldán, José Gregorio, 269
 Paz Soldán, Juan Pedro, 204
 Paz Soldán, Luis Felipe, 178, 223
 Paz Soldán, Mariano Felipe, 212
 Peixoto, Sebastián de S., 116
 Peixoto, Sebastián E., 70 n.4
 Penagos, Juan Pedro, 74 n.6
 Peña Prado, Mariano, 33, 156
 Peñaloza Vega, Augusto C., 86
 Peral, Juan D., 53
 Peralta, José, 234
 Peralta Vázquez, Antero, 274
 Peregrino de Silva, Manoel Cicero, 216 n.8
 Pérez, José María, 7
 Pérez, Miguel Angel, 246 n.15
 Pérez de Tudela, Manuel, 88
 Pérez Figuerola, Arturo, 216 n.4
 Pérez Figuerola, Justo, 147 n.4
 Pérez Liendo, Rosa, 126 n.13
 Pérez Santistéban, Víctor, 86
 Perla Velaochaga, Ernesto, 119
 Pershing, John Joseph, 218
 Pflücker Olquín, Germán, 126 n.13
 Pflücker y Rico, Leonardo, 78
 Philip II, King of Spain, 77
 Piérola, Nicolás de, 8, 198, 261
 Pimentel Benites, Elio, 71
 Pinilla Sánchez Concha, Antonio, 157
 Pinillos, Jorge E., 103 n.9
 Pino Carpio, Remigio, 116, 147 n.3
 Pino González, Juan José del, 271
 Piragibe, Vicente, 256 n.1
 Pizarro, Francisco, 1
 Poincaré, Raymond, 227
 Ponce, N. Clemente, 234 n.33
 Ponce de León, Alberto, 65
 Ponce de León Pacheco, Francisco Javier, 41
 Porras, Melitón F., 204, 218
 Porras Barrenechea, Raúl, 210, 254
 Portal y Espinosa, Ismael, 222
 Portella, Carlos, 79
 Portocarrero, Alfredo, 100 n.6
 Portocarrero, Felipe S., 33
 Portocarrero Olave, Felipe, 209, 210 n.44
 Portocarrero Olave, Félix, 98
 Portocarrero Olave, Florencio, 122
 Portugal, Félix W., 101 n.8
 Portugal, Manuel Pío, 92, 270
 Posadas, Efrén, 81
 Posadas, Tobías, 81
 Postigo Cáceres, Roberto, 127, 272
 Pozo, Antenor del, 55, 63
 Pradier-Fodéré, Camille, 203
 Pradier-Fodéré, Paul Louis Ernest, 31, 203, 244, 248
 Prado, Manuel, 8, 70, 163, 175
 Prado, Mariano I., 8, 151
 Prado y Ugarteche, Javier, 116 n.32, 159 n.51, 214 n.20, 219
 Puente Arnao D., Ernesto, 160 n.51
 Puente Uceda, Luis F. de la, 72
 Puga Imaña, Mario A., 24, 43
 Quintanilla Poulet, Antonio, 71 n.10
 Quiñe Arista, Luis, 33, 181
 Quirós Vega, Francisco, 167
 Rabasa, José Nicolás, 7
 Rada, Pablo A., 252
 Rada y Paz Soldán, Germán, 208 n.36
 Ramírez Barinaga, Manuel A., 128 n.4
 Ramírez Gastón, José M., 191
 Ramírez Guarantz, Marcial, 263
 Ramírez Novoa, Ezequiel, 86
 Ramírez Otárola, Jorge, 193
 Ramírez Villasante, Gustavo, 183 n.47
 Rávago, Enrique de, 278
 Rávago Bustamante, Luis A., 182
 Rávago Velarde, Enrique, 192
 Razzeto, Mario, 70 n.4

- Reátegui Weninger, Eduardo, 245
 Rebagliati, Edgardo, 275
 Reed, Edwyn C., 220
 Renault, Louis, 213 n.11
 Rendón, Jorge, 145, 196
 Rendón, Roberto, 145
 René-Moreno, Gabriel, 280
 Revollar Fernández, Julio, 256 n.4
 Rey de Castro, Alvaro, 246 n.15
 Rey de Castro, Jaime, 130
 Rey de Castro Romaña, Alberta, 62
 Reyna Farge, José, 246 n.15
 Ribeyro, Juan Antonio, 151, 163, 176
 Ribeyro, Ramón, 78
 Ricci, Denis de, 143
 Ricketts, C. A., 40
 Río, Mario E. del, 62
 Ríos, Augusto, 159 n.51
 Ríos, José Antonio, 70 n.4
 Ríos, Ricardo R., 31, 261
 Ríos Fajardo, Tomás, 262, 266
 Ríos Lafaix, Julio C. de los, 256 n.34
 Risco, César F. del, 200
 Riva Agüero, José de la, 3, 253
 Rivadeneira, Ricardo, 190 n.3
 Rivera Schreiber, Ricardo, 135 n.34
 Rivera y Piedra, J., 117 n.32
 Rivet, Paul, 251
 Robles Ruíz, Gregorio, 160 n.51
 Roca Muelle, Benjamín, 53
 Rocha Fernandini Y., José, 79
 Rocha Gutiérrez, Rafael, 220
 Rodrigo Mazuré, Luis Carlos, 58, 133 n.13
 Rodríguez, José Manuel, 124
 Rodríguez, Luis Guillermo, 117 n.32
 Rodríguez, Manuel C., 81, 93
 Rodríguez Escobedo, Carlos, 75, 83
 Rodríguez Llerena, Darío, 95, 115, 168
 Rodríguez Orbegoso, Aurelio, 129 n.4
 Rodríguez Pastor, Carlos, 192, 250
 Rodríguez Ramírez Carpi, Alberto, 33
 Rodríguez y Montoya, José Manuel, 43, 138 n.12
 Rodríguez y Rodríguez, Abel, 138 n.12
 Romaña, Carlos L., 104 n.10
 Romero, Eleodoro, 116 n.32
 Romero, Emilio, 10, 49
 Romero, Julián Guillermo, 115, 154, 191, 258
 Romero Lozado, Rodolfo, 104 n.10
 Romero Romaña, Eleodoro, 105, 106 n.11
 Roosevelt, Franklin D., 229, 235
 Rospigliosi, José Julio, 88
 Rospigliosi, Manuel Julio, 79
 Rossel y Puga, Gerardo, 159 n.51
 Rossell de Cárdenas, W., 53
 Rossi Dasso, Guido de, 129
 Rousseau, Jean Jacques, 3
 Rueda Sánchez, Gregorio, 25, 35, 56, 188 n.16
 Saavedra, Bautista, 213
 Saavedra, Padre, 73
 Saco Miró Quesada, José Antonio, 71
 Salazar B., Carlos H., 117 n.32
 Salazar y Baquijano, Manuel, 3
 Salinas, Manuel M., 222
 Salmerín y Alonso, Nicolás, 233
 Salomón, Alberto, 223
 Samamé, José M., 252
 Samamé Boggio, Mario, 79
 Samamé Pacheco, Benjamin, 188 n.16
 Samanamú, Francisco, 93, 114, 124
 Sánchez, Ezequiel, 182 n.47
 Sánchez, Hipólito, 89
 Sánchez, Luis Alberto, 36, 257
 Sánchez, Masías D., 97
 Sánchez Arauco, Julio R., 129 n.4
 Sánchez Carrión, Héctor R., 117 n.32
 Sánchez Cerro, Luis M., 9, 11, 39, 46, 173, 180, 224
 Sánchez Gamarra, Francisco, 117, 118 n.35
 Sánchez Palacios, Manuel, 118, 139
 Sánchez Sorondo, Matías Guillermo, 214
 Sánchez Urteaga, José, 256 n.34
 San Cristóval, Evaristo, 183 n.47, 222, 226
 Sandoval, Julián, 7
 Sandoval Cerna, Ernesto, 37
 San Martín, José de, 1-3, 38, 149, 161, 171, 198, 259
 Santa-Cruz, Andrés, 4-6, 17, 88, 109, 149, 161, 172
 Santa Cruz Medina, F., 33
 Santamaría, Julio H., 236
 Santamaría de Paredes, Vicente, 234
 Santa-Pinter, J. J., 240
 Santibáñez, Alberto, 108 n.12
 Santos Chocano, José, 226
 Santos Pasapera, Manuel, 74, 80, 89, 110
 Santos Quirós, Mariano, 260
 Sayán Alvarez, Carlos, 207
 Schoof Gutiérrez, Guillermo, 246 n.15

- Schwab, Federico, 281
 Schwalb, Fernando, 82
 Scott, James Brown, 205
 Scudellari, Carlos, 196
 Seminario Helguero, Gabriel, 157
 Seoane, Edgardo, 71
 Seoane, Guillermo Alejandro, 93, 114, 153, 219, 270
 Seoane, Juan, 159 n.51
 Servera, Joaquín, 124, 140 n.3
 Silva Rocha, Maximiliano, 70 n.4
 Silva S., Ramón, 140, 191
 Silva Santistéban, Emilio, 125 n.13
 Silva Santistéban, José, 14, 92, 113, 153, 203, 251
 Silva Santistéban, Wenceslao, 62
 Simas de Souza, Cecilia, 131 n.15
 Sivirichi, Atilio, 41
 Skinner, Guillermo, 21
 Smith, Robert Sidney, 171 n.2
 Sobrevilla González, Luis, 125
 Solano, Susana, 155, 279
 Solar, Emilio del, 69 n.4, 125 n.13
 Solf García Calderón, Alfredo, 101 n.7
 Solf y Muro, Alfredo, 89, 110, 159 n.51
 Solís, Abelardo, 69, 185 n.8
 Sommaruga, Alberto V., 158
 Soria, Francisco de Paula, 235
 Soto y Macedo, Manuel León, 179, 265
 Souza Ferreira H., Alfonso de, 24
 Stuart, Graham H., 17, 32
 Sucre, Antonio José de, 3
 Sueldo Guevara, Rubén, 188 n.16

 Tarazona S., Justino M., 36
 Tauro, Alberto, 282
 Távara, José J., 101 n.7
 Távara, Santiago, 150
 Tejada, José Simeón, 150, 162
 Tello Lezama, Américo, 159
 Temple, Ella Dunbar, 283
 Terreros, Jacinto, 70 n.4
 Thöl, Juan, 83, 128 n.4
 Thomas, A. J., Jr., 237 n.1
 Thomas, Ann Van Wynen, 237 n.1
 Thomson, Norman, 225
 Thorndike, Augusto, 52
 Tirado, José Manuel, 88
 Tola, Fernando, 35, 251
 Toledo, Francisco de, 77
 Toledo Mas, César, 102

 Tolmos Alfaro, Arturo, 138 n.12
 Torre Tagle, José H., 160 n.51
 Torre Tagle, Marquis of, 3
 Torres, Octavio, 100 n.2, 164 n.10
 Torres Málaga, Guillermo, 81
 Torres Malpica, Octavio, 158
 Trujillo Mena, Valentín, 257
 Tubino M., Fidel, 256
 Tudela, Francisco, 205, 236
 Tudela Varela, Antonio, 39 n.2
 Tupiño Agüero, Manuel A., 183 n.47, 262

 Ubillús, Julio C., 70 n.4
 Ubilluz, Edmundo, 106 n.11
 Uceda Castañeda, Carlos E., 197
 Ugarte, Angel, 7
 Ugarte, César Antonio, 10, 47, 69 n.4
 Ugarte del Pino, Juan Vicente, 257
 Ulloa, José Casimiro, 212
 Ulloa, Luis, 225, 234
 Ulloa Carrasco, Abraham, 103 n.9
 Ulloa y Sotomayor, Alberto, 70, 126, 191, 205, 211, 220, 224
 Ureta, Manuel Toribio, 150, 268
 Ureta del Solar, Guillermo, 53
 Urgateche, Pedro, 281
 Uribe, Antonio José, 225
 Urrea, José Celedonio, 252
 Urrutia, Tomás, 121
 Urteaga, Horacio H., 178, 208 n.36

 Vacas Galindo, Enrique, 231
 Valcárcel, Luis E., 10
 Valdez, Noé, 106 n.11
 Valdez Tudela, Napoleón, 193
 Valdivia R., Angel Eduardo, 36, 56
 Valdivieso Gómez, Carlos A., 167
 Valdizán, Hermilio, 89
 Valdura, Juan Gualberto, 78
 Valega, José Manuel, 58, 96, 117, 127, 158, 164 n.10, 187 n.16
 Valega, Juan José M., 164
 Valle Rándich, Luis del, 169
 Vallejos y González, J. M., 250
 Valverde, Carlos A., 225
 Valverde, Emilio F., 102, 103 n.9, 105 n.10, 159 n.51, 208 n.36
 Van der Burch, Alexandre, 214 n.20
 Van Dyke, Harry Weston, 234
 Vanni, Icilio, 253
 Varallanos, José, 40, 251

- Vásquez, Honorato, 231
 Vásquez, Máximo., 16
 Vásquez Estremadoyro, José, 58
 Vázquez, J. Ricardo, 125
 Vecorena, R., 39 n.2
 Vega Centeno, Emilio, 39 n.2
 Velarde, Carlos E., 81
 Velarde, Francisco E., 182 n.47
 Velarde, Hernán, 218
 Velarde Morán, Ernesto A., 36, 54, 55 n.26, 188 n.16
 Velasco Alvarado, Juan, 11, 13
 Velasco Núñez, Manuel D., 41
 Velazco, Gil, 74 n.6
 Velázquez, Ernesto, 185, 200
 Venegas, José Ramón, 187 n.16
 Vento, Sócrates, 36
 Ventancourt Aristeguieta, Francisco, 62
 Vidal Cárdenas, Enrique, 52
 Vidal Olivos, Justiniano, 69 n.4
 Vidalón Arana, Filiberto, 103 n.9
 Vidalón Menéndez, Cesáreo, 126 n.13
 Vidaurre, Salvador, 208 n.36
 Vidaurre y Encalada, Manuel Lorenzo de, 14, 87, 149, 165, 172, 281
 Vieytes Ledesma, José, 182 n.47
 Vigel, Francisco de Paula, 14 n.6
 Vigil, Manuel A., 193
 Viguera Hermosilla, Solón, 106 n.11
 Villacres Moscoso, Jorge W., 236
 Villagarcía, Augusto, 182 n.47
 Villanueva Osorio, Rafael M., 106 n.11
 Villar Alcedo, Manuel, 106 n.11
 Villarán, Federico, 121
 Villarán, Luis Felipe, 15, 110, 121, 160 n.51, 169 n.34, 254
 Villarán, Manuel Vicente, 10, 15, 110, 246 n.15, 253, 255
 Villarán A., Augusto, 104 n.10
 Villavicencio, Víctor Modesto, 70, 167, 257
 Villegas, Julio César, 63, 67, 271, 276
 Villegas Ramos, Bernardino, 104 n.10
 Villón, Pedro Cristóbal, 70 n.4
 Vitoria, Francisco de, 256
 Vivanco, Guillermo de, 62
 Vivanco, José María, 208 n.36
 Vivanco Mujica, Ernesto, 183 n.47
 Vivas Castillo, Alcibiades, 108 n.12
 Wallace, Donald O., 57
 Weiss, André, 215 n.20
 Wiese, Carlos, 204, 216, 238
 Wilson, Woodrow, 206, 220
 Woolsey, Lester H., 227
 Ydiáquez, José Román de, 140 n.2
 Yllanes, José S., 100 n.6
 Zaldívar la Torre, Gonzalo, 100 n.6
 Zamalloa Loaiza, Rodolfo, 49
 Zamora Torres, Víctor, 43, 62
 Zapata, Ernesto, 52
 Zárate, Fidel A., 50
 Zárate Jurado, Raúl, 183 n.47
 Zavala Loaiza, Carlos, 116, 156, 164, 252
 Zavaleta Cruzado, Roger, 115
 Zegarra, Félix Cipriano C., 244
 Zegarra Beltrán, Guillermo, 103 n.9
 Zegarra Garnica, Federico, 188 n.16
 Zegarra L., Jorge M., 71
 Zevallos, Germán D., 93, 155, 182 n.47
 Zúñiga Guardia, Carlos Ivan, 160 n.51

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